

## **Contract**

between

**DOC** (Dept. of Corrections) and  
**CCA** (Corrections Corporation of America) private prison in Shelby, MT.

### **Violations:**

\$64.00 per inmate day, including building payment, calls for 176.3 FTE. I estimate the actual FTE at between 80 and 100. I estimate that the DOC is shorted over \$3,000,000 per year from lack of staff. Shortage of staff creates unsafe situations for inmates.

### **Pages 2, 18-19 and 40**

DOC has a Contract Monitor on site that is supposed to "monitor the operations of the facility for compliance with the Correctional Services Contract." If a vacancy occurs in staff positions, he is to charge a fine and deduct this from CCA's next payment. Is this being done?

### **Page 2 of Contract Amendment**

This amendment provides for placing inmates in a 52 bed dormitory (known as S-dorm). This is a converted Gymnasium that does not meet American Correctional Association Standards. In April 2011, the 52 inmates located in the S-dorm were moved out because ACA would not approve the accreditation of that area as required on page 1 of the contract. Accordingly, all inmates were moved to other locations until after the accreditation was approved for the next 2 years.

Soon after, the S-dorm was again housing inmates. About a month later the fire marshal came and wrote up CCA for violation because the only exit from the S-dorm is the hall that has gas lines and electrical lines in the ceiling and is directly across from the kitchen. Most fires start in the kitchen. CCA has ignored the fire marshal's report and there are 20 to 30 inmates in the S-dorm at this time. Failure to comply is a breach of contract. (page 6)

### **Page 22, Food**

Printed on some of the boxes of food in the prison dining area is marked "NOT FOR HUMAN CONSUMPTION." What is in those boxes? The prison occasionally serves fruit, but not on a daily basis. On a 24 hour period, each inmate must receive the recommended dietary allowances provided by the National Research Council Food and Nutrition ~  
being met?

Law & Justice Interim Committee  
September 9, 2011

**Page 23 and 25, Health Services**

Services provided on site shall include: medical, *psychiatric*, dental, vision, pharmaceutical and other specialty services. There are no psychiatric services available on site at CCA – service is provided by video from Florida.

CCA is responsible for the provision and cost of all medically-related transportation both routine and emergency, for off-site services. We have heard about one inmate who has a bulging hernia and is in pain and unable to walk upright. He needs to see a specialist off-site and have this medical emergency taken care of. “Contractor is responsible for the first \$1,000 in all off-site health related services per inmate per state fiscal year which would otherwise be the responsibility of the Department.”

**Page 27, Vocational Programs**

No vocational programs offered as required.

**Page 28, Outdoor Recreation**

“Contractor must provide adequate opportunities for physical exercise. The recreational program will include indoor, outdoor and hobby activities.” The inmates are told that because there is a shortage of guards, they are seldom allowed to go outdoors. If the prison hired the number of staff they are allowed and receive payment for, there would be enough guards to provide the safety required for outdoor activities.

**Page 29, Industry Programs**

No inmate industry programs, 10,000 square foot building not used.

**Page 30, Attorney**

No contract attorney on board to assist inmates in the drafting and filing of complaints, post-conviction petitions, sentence review applications, notice of appeal and habeas corpus petitions.

**Page 36, Disabilities Act**

The Americans with Disabilities Act according to the contract, are ignored by CCA and DOC. At least two inmates have impaired vision that qualifies them to purchase larger TV sets based on the rules. Both inmates have been denied their requests.

**From the Inmate's Handbook**

"Toilet paper will be passed 2 times a week by CCC staff. You are allowed one roll of toilet paper per inmate for maximum of two rolls per cell. If you run out of toilet paper before the next toilet paper pass out you may purchase toilet paper on commissary."

If the inmate uses his supply of toilet paper before the end of the week, he is told by the guards to use his hands. The rolls of paper are small and paper is thin and made in China – they have no center hole. Toilet paper can be ordered through the Canteen, but takes 2 weeks before it arrives.

**Page 33**

Indigent inmates do not have the monies to purchase from the Canteen. "The Contractor shall provide inmates who are indigent with personal health and welfare items." Is CCA providing these inmates with additional toilet paper?

**CONTRACT AMENDMENT  
OPERATION AND MANAGEMENT SERVICES  
At Crossroads Correctional Center in Shelby, Montana**

THIS CONTRACT AMENDMENT (Amendment #10) is made and entered into between the Montana Department of Corrections (Department) 1539 11<sup>th</sup> Ave., Helena, Montana 59620-1301 and Corrections Corporation of America (Contractor) 10 Burton Hills boulevard, Nashville, Tennessee 37215

WHEREAS, the Department and Contractor entered into a Contract for the operation and management of the Crossroads Correctional Center (Facility) on July 22, 1998; and

WHEREAS, Section XXXXVII of the Operations and Management Services Contract provides for amendment of the Contract by mutual written agreement of the parties.

NOW THEREFORE, in consideration of the foregoing, the parties amend the Contract, as follows.

**SECTION I**

**Contract Terms**

*This section is revised by the addition of the following:*

**MDOC and MSP Policies and Procedures;** means the list of policies and procedures of the Department and Montana State Prison that Contractor shall adopt or substantially comply with as specified on Attachment A to this Amendment.

**SECTION III**

**Duration**

*Subsection A shall be revised to read as follows:*

- A. The Operations and Management Contract has been extended through August 31, 2011. The parties may renew this Contract for four (4) [additional] two (2)-year periods, all said periods subject to satisfactory evidence of contractual compliance. The original contract term began September 1, 1999 and the total life of the Contract, including renewals, shall not go beyond August 31, 2019.

**SECTION V**

**Compensation and Adjustments**

*Subsection D shall be revised to read as follows:*

- D. In consideration for all services provided, and barring any Contractor Compliance Assessment adjustments resulting from the Department's Contract monitoring processes, the Department will pay Contractor according to the following schedule:

"Subject to the exception stated below, the Operations and Management per diem rate retroactive to September 1, 2009 and ending August 31, 2011 shall be \$54.84 per inmate day for each MDOC inmate housed at the Facility. This rate will remain in effect until changed by mutual agreement. Hereafter, the parties agree to negotiate the amount of per diem in good faith in keeping with the Consumer Price Index and other cost factors."

The MDOC shall not pay the \$9.14 use fee referenced in Section II, subsection (F)(2) of the Contract for Facility Development and shall not receive a credit toward construction costs for any MDOC inmate housed in the 52 bed dorm completed in 2004. However, the Contractor agrees to charge and collect from the originating jurisdiction this daily use fee for all other inmates housed in this dorm or at the Facility and to credit said use fee toward facility construction costs as specified in the Facility Development contract.

The per diem rate set forth in this Amendment is contingent upon the continuation of the prevailing wage rates set forth in Appendix I of the Contract and effective January 1, 1998. If the prevailing wage rates set forth in Appendix I are increased by the Commission of Labor and Industry or otherwise, the parties agree to increase the per diem rate in accordance with the increased labor costs. The increase in per diem shall be concurrent with the increase in wage rates.

The MDOC will use 98% of all other MDOC beds at the Facility, with the exclusion of the two 48 bed blocks used for the USMS, before placing inmates in the 52 bed dorm.

## **SECTION XII**

### **Facility Administration**

*Subsection B shall be revised to read as follows:*

- B. The Contractor shall have a policy and procedure manual pre-approved by the Department which specifically describes the programs and services it offers. The policy manual shall be reviewed annually by the Contractor and updated when necessary. All revisions to the manual must be submitted to the Department for review and approval prior to implementation. The Department will review and provide approval or comments within 30 days of receipt of revisions to the manual. Contractor may utilize its own procedures for policy implementation. The manual must be accessible to all employees and all revisions must be circulated to all employees prior to implementation. To encourage consistent inmate management and treatment, the Contractor shall adopt or substantially comply with the MDOC and MSP Policies and Procedures as specified on Attachment A to this Amendment. If there is a conflict between Attachment A and any other contract term, Attachment A shall prevail.

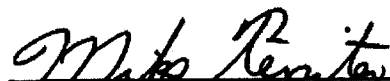
## **APPENDIX II – POSITION ROSTER**

*Appendix II is replaced in its entirety, as per the attached.*

This constitutes the amendment to this Contract. All other provisions of the Operations and Management Contract not otherwise amended herein shall remain in full force and effect.

**SIGNATURES**

**DEPARTMENT**

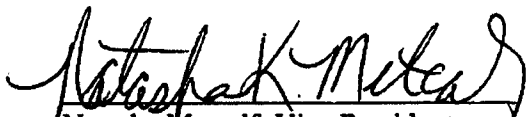
  
Mike Ferriter, Director  
Montana Department of Corrections

2.19.10  
Date

  
Brian Schweitzer, Governor  
State of Montana


July 29, 2010  
Date

**CONTRACTOR**

  
Natasha Metcalf, Vice President  
~~Customer Contracts~~ Partnership Development  
Corrections Corporation of America

7/1/10  
Date

Approved for Legal Content by:

  
Diana Koch  
Chief General Counsel  
Montana Department of Corrections

2/17/10  
Date

**CROSSROADS CORRECTIONAL CENTER  
SHELBY, MONTANA  
660 Male Beds (564 MT / 96 USMS)**

**CONTRACT AMENDMENT**

MANAGEMENT/SUPPORT	10.00
SECURITY/OPERATIONS	70.00
UNIT MANAGEMENT	53.60
MAINTENANCE	4.00
SERVICES	3.00
PROGRAMS	12.00
HEALTH SERVICES	13.60
EDUCATION	10.00

Warden	1	0	0	5	1.00	1.00
Assistant Warden	1	0	0	5	1.00	1.00
Training Manager	1	0	0	5	1.00	1.00
Manager, Operations Finance	1	0	0	5	1.00	1.00
Manager, Human Resources	1	0	0	5	1.00	1.00
Manager, Quality Assurance	1	0	0	5	1.00	1.00
Safety Manager	1	0	0	5	1.00	1.00
Secretary	1	0	0	5	1.00	1.00
Mailroom Clerk	1	0	0	5	1.00	1.00
Administrative Clerk-Payroll/Master Scheduler	1	0	0	5	1.00	1.00

Chief of Security	1	0	0	5	1.00	1.00
SCO - STG / Investigative Officer	1	0	0	5	1.00	1.00
* Grievance Officer	1	0	0	5	1.00	1.00
* Visitation Officer	2	0	0	5	1.20	3.00
* Work Detail Officer	2	0	0	5	1.00	2.00
* Laundry Officer	1	0	0	5	1.20	1.00
* Education Officer	1	0	0	5	1.20	1.00
* Armory/Key Control Officer	0	1	0	5	1.00	1.00
* Front Lobby Officer	1	1	0	7	1.72	3.00
* Correctional Officer, Part-Time	1	1	0	5	0.50	1.00
Administrative Clerk	1	0	0	5	1.00	1.00
Shift Supervisor	1	1		7	2.20	5.00
Assistant Shift Supervisor	1	1		7	2.20	5.00
* Central Control Officer	2	1		7	2.20	6.60
* Perimeter Patrol (Mobile) Officer	1	1		7	2.20	4.40
* Recreation Officer	2	0		7	2.20	4.40
* Utility/Search & Escort Officer	2	2		7	2.20	8.80
* Utility/Segregation Officer	1	1		7	2.20	4.40
* Segregation Officer	1	1		7	2.20	4.40
* Medical Officer	1	1		7	2.20	4.40

**CROSSROADS CORRECTIONAL CENTER  
SHELBY, MONTANA  
660 Male Beds (564 MT / 96 USMS)**

**CONTRACT AMENDMENT**

* Transportation Officer	2	0	7	2.20	4.40
* Kitchen Officer	1	0	7	2.20	2.20

Chief of Unit Management	1	0	0	5	1.00	1.00
Administrative Clerk	1	0	0	5	1.00	1.00
Records Clerk	1	0	0	5	1.00	1.00
Unit Manager	2	0	0	5	1.00	2.00
Case Manager	4	0	0	5	1.00	4.00
Correctional Counselor	4	1	0	5	1.00	5.00

**UNIT MANAGEMENT #1 (256-Bed Cellblock / 52-Bed Dorm)**

* Housing Officer	4	4	7	2.20	17.60
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**UNIT MANAGEMENT #2 (256-Bed Cellblock / 96-Bed Cellblock - USMS)**

* Housing Officer	5	5	7	2.20	22.00
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Maintenance Supervisor	1	0	0	5	1.00	1.00
Maintenance Worker	3	0	0	5	1.00	3.00

Warehouse Manager	1	0	0	5	1.00	1.00
*** Warehouse/Commissary Worker	2	0	0	5	1.00	2.00
** Food Service Manager	1	0	0	5	1.00	Contract
** Food Service Supervisor	1	1	0	7	1.40	Contract

Classification Supervisor	1	0	0	5	1.00	1.00
Licensed Clinical Social Worker	1	0	0	5	1.00	1.00
Mental Health Coordinator	1	0	0	5	1.00	1.00
Addictions Treatment Manager	1	0	0	5	1.00	1.00
Addictions Treatment Counselor	1	0	0	5	1.00	1.00
Recreation Supervisor	1	0	0	5	1.00	1.00
Recreation Coordinator (Arts & Crafts)	1	0	0	5	1.00	1.00
Chaplain	1	0	0	5	1.00	1.00
Administrative Clerk - ATU	1	0	0	5	1.00	1.00
Administrative Clerk	3	0	0	5	1.00	3.00
** Contract Attorney	CONTRACT / PRN					



**CROSSROADS CORRECTIONAL CENTER  
SHELBY, MONTANA  
660 Male Beds (564 MT / 96 USMS)**



**CONTRACT AMENDMENT**

**CROSSROADS CORRECTIONAL CENTER  
SHELBY, MONTANA  
660 Male Beds (564 MT / 96 USMS)**

**CONTRACT AMENDMENT**

Health Services Administrator	1	0	0	5	1.00	1.00
Dental Hygienist	1	0	0	5	0.60	0.60
RN	1	0	0	5	1.00	1.00
Medical Records Clerk	1	1	0	5	1.00	2.00
** Physician (CMA)	CONTRACT / 4 HOURS PER WEEK					
** ARNP/PA (CMA)	CONTRACT / 20 HOURS PER WEEK					
** Dentist (CDA)	CONTRACT / 32 HOURS PER WEEK					
** Dental Assistant	CONTRACT / 32 HOURS PER WEEK					
** Psychiatrist (CMA)	CONTRACT / 8 HOURS PER WEEK					
** Optometrist	CONTRACT / 8 HOURS PER WEEK					
RN	1	1		7	2.20	4.00
RN, Part-Time	1	0		7	0.50	0.50
LPN	1	1		7	2.20	4.00
LPN, Part-Time	0	1		7	0.50	0.50

Principal	1	0	0	5	1.00	1.00
Instructor Supervisor	1	0	0	5	1.00	1.00
Academic Instructor	4	0	0	5	1.00	4.00
Vocational Instructor	2	0	0	5	1.00	2.00
Library Aide	1	0	0	5	1.00	1.00
Administrative Clerk	1	0	0	5	1.00	1.00
** Librarian	CONTRACT / PRN					

CROSSROADS660-12HOUR-CONTRACT-06/22/10

- \* Post positions included in the Correctional Officer job classification.
  - \*\* Positions hired on a contractual or fee basis for services rendered.
  - \*\*\* Salary and benefits reimbursed from commissary profits
- dentists that provides services exclusively to CCA correctional facilities.

**CONTRACT FOR OPERATION AND MANAGEMENT SERVICES**

**Authorized by the Private Correctional Facility Act:  
53-30-601 through 53-30-611, M.C.A. (1997)**

**MINIMUM, MEDIUM, CLOSE, SECURITY PRISON FOR ADULT MALE OFFENDERS**

**BY AND BETWEEN**

**MONTANA DEPARTMENT OF CORRECTIONS  
1539 11th Avenue, Helena, Montana**

**and**

**CORRECTIONS CORPORATION OF AMERICA  
10 Burton Hills Boulevard, Nashville, Tennessee 37215**

**RECITALS**

**WHEREAS**, in House Bill 2 the Fifty-fifth Montana Legislature authorized the Department to issue a Request for Proposals and enter into a contract with a private vendor during the 1999 biennium for the construction of a correctional facility of approximately 500 beds and the housing of inmates in the facility; and

**WHEREAS**, the Department of Corrections issued a Request for Proposals and received bid proposals from 5 private prison companies, including Corrections Corporation of America; and

**WHEREAS**, on the basis of the proposals, further clarifications, and best and final offers the Department of Corrections selected Corrections Corporation of America's proposal as the most advantageous for the State of Montana; and

**WHEREAS**, in House Bill 83 the Fifty-fifth Montana Legislature set standards for the construction and operation of private prisons in Montana; and

**WHEREAS**, the Montana Legislature has required that private prisons must substantially conform with American Correctional Association standards and National Commission on Correctional Health Care standards;

**NOW THEREFORE**, the Department of Corrections and Corrections Corporation of America as parties to this contract, and in consideration of the mutual promises contained herein, agree as follows:

**THIS CONTRACT IS CONTINGENT UPON APPROVAL OF FUNDING BY THE FIFTY-SIXTH LEGISLATURE AS WELL AS FUNDING BY EACH SUCCESSIVE LEGISLATURE.**

## **SECTION I**

### **Contract Terms**

**ACA;** means American Correctional Association.

**ACA Standards;** means Standards for Adult Correctional Institutions published by the American Correctional Association, in effect as of September 1999, and as the same may be modified, amended, or as supplemented in the future.

**Biennium;** means the two-year period beginning on July 1 and ending on June 30 of odd numbered years which correspond to Montana's legislative sessions and the state's budgeting period.

**Bona fide Montana resident;** means a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be Bona fide residents of Montana.

**Conflict of Standards;** means that a conflict exists between ACA Standards, NCCHC Standards, federal, state or local law or regulation, and/or the Contract.

**Contract Monitor;** means the MDOC employee or employees designated to monitor the operation of the facility for compliance with the Correctional Services Contract.

**Contractor;** means Corrections Corporation of America.

**Department;** means Montana Department of Corrections.

**Facility;** means the fully equipped and furnished prison which is operated by the Contractor. Facility includes all housing units, administrative offices, classrooms, hearing room, medical infirmary unit and all other structures of whatever kind including roads, fences, infrastructure, utility systems, etc., to be constructed for the incarceration of inmates assigned by MDOC.

**FF&E;** means furnishings, fixtures and equipment with a unit cost of \$500.00 or more and a useful life of one year or more for the facility.

**Fiscal Year;** means a one year period beginning July 1 and ending June 30 the following year.

**For Cause;** includes, but is not limited to:

- 1) failure of a party to comply with the terms of this Contract;
- 2) Contractor bankruptcy, reorganization, or liquidation; or
- 3) failure of Contractor to comply with the Private Correctional Facility Act, ACA or NCCHC Standards, Department rules.

**Infrastructure;** means the utilities, roads, sewers, lagoons, and water system.

**Inmate Day;** means each day, or part of a day, including the first but not the last day in which an inmate is housed at the facility.

**MSP;** means Montana State Prison.

**NCCHC;** means National Commission on Correctional Health Care Standards for Adult Correctional Institutions published by the National Commission on Correctional Health Care, in effect as of September 1999, and as the same may be modified, amended, or as supplemented in the future.

**Per Diem;** means the cost per inmate per day to which these parties agreed.

**P.O.S.T.;** means Montana Peace Officer Training Standards.

**Proposal;** means all materials submitted by the Contractor in response to the Department's RFP and any amendments thereto including the Department's Addendum #1 to the RFP dated December 19, 1997, follow up clarifications to Addendum #1 dated January 27, February 5 and 10, 1998, written responses to all questions for clarifications, and Contractor's Best and Final Offer dated June 12, 1998.

**RFP;** means the Department's Request for Proposal, "RFP No.PP.500-97".

**Security "Minimum";** means the custody level of inmates whose movement within the Facility is unrestricted. Moderate supervision may be implemented when minimum custody inmates are secured within their assigned housing unit or work site. Work assignments are authorized inside and outside any perimeter fence. For movement within the Facility, no restraints are required. A minimum of one staff must escort on transports outside the Facility.

**Security "Medium";** means the custody level of inmates whose movement within the Facility is restricted. Work assignments are authorized in a double or single fenced compound with indirect supervision. For movement within the Facility, no restraints are required. For movement out of the Facility, wrist and belt restraints are required. A minimum of one staff must escort medium custody inmates on transports out of the Facility.

**Security "Close";** means the custody level of inmates whose movement within the Facility is very restricted. These inmates typically include inmates released from Maximum custody or disciplinary segregation who have serious records of institutional misconduct and who are re-entering general population. Close custody also includes reception inmates awaiting transfer to the appropriate housing unit (excluding On Leave to Custody (OLTC) and ten day furlough returns), "Temporary Lock up" for inmates facing disciplinary and reclassification hearings for serious rule infractions and inmates serving detention time for disciplinary violations. Work assignments are limited to inside a double-fenced perimeter with direct supervision. For movement within the Facility, no restraints are required. For movement outside the Facility, wrist, belt and leg restraints are required. A minimum of two staff must escort Close custody inmates on transports out of the Facility.

**State;** means State of Montana

**Supervision "Direct";** means constant, uninterrupted supervision of an inmate. The staff must be in the immediate presence of inmates at all times.

**Supervision "Indirect";** means a non-routine lapse in Direct Supervision is allowed for short, temporary periods provided the inmate is in a secure area or, staff may have visual supervision of an inmate without being within the immediate presence of the offender.

**Supervision "Moderate";** means inmates may be in an assigned area without the immediate presence of staff, but staff check on the inmate at specific, non-routine intervals.

## **SECTION II**

### **Policy Statement**

- A. This Contract between the Department and the Contractor for the operation and management of a private prison, entered for the benefit of the public and inmates, is premised on the following goals of privatization:
1. to provide the public with prison services that are cost efficient and effective with respect to the purposes and goals of incarceration;
  2. to provide inmates with proper care, treatment, rehabilitation, and reformation;
  3. to provide the public and inmates with prison services that meet the requirements of the American Correctional Association, the National Commission on Correctional Health Care, licensing requirements of the State of Montana, and other minimum standards that may be promulgated by the Department; and
  4. to provide the State of Montana with the opportunity to compare the costs and benefits of privatized corrections with the costs and benefits of public corrections.

This Contract is entered in consideration of these goals of privatization.

### **General Requirements**

- A. The Contractor shall provide all services and management for the operation of a 500 bed, minimum to close security prison for adult male offenders. Contractor shall begin accepting inmates no later than September 1, 1999, on a schedule of up to 100 inmates per week. Total occupancy level is estimated to be achieved on or before November 1, 1999.
- B. It is anticipated that the Facility capacity will be expanded. Contractor shall cooperate with the Department concerning scheduling Facility expansion.
- C. The Department's RFP, Addendum to the RFP, follow up notices to the Addendum, Contractor's Proposal, and Contractor's changes to Proposal through the Best and Final Offer

Process are hereby incorporated by reference and are made a part of this Contract as if set forth in full herein. This Contract consists of and precedence is established by the order of the following documents incorporated into this Contract:

4. This Contract document;
  2. The RFP, including Addendums and follow up notices; and,
  3. The Proposal, including Addendums and Contractor's Best and Final Offer, as accepted by the Department.
- D. The Contractor shall notify the Department in writing of any alleged conflict between the documents and any alleged conflict shall be resolved by the Department after review of the alleged conflict according to the considerations set forth herein. The documents in the preceding paragraph are complementary and what is required by one shall be binding as if required by all. However, in the case of any conflict or inconsistency arising under the documents, a higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency.
- E. In accordance with requirements of 53-30-601 through 53-30-611, MCA, the Facility must be licensed by the Department as a "private correctional facility" by August 1, 1999.
- F. The Contractor must achieve ACA accreditation within three years from the opening date of the Facility and must maintain ACA accreditation for the life of this Contract.
- G. The Contractor must achieve National Commission on Correctional Health Care accreditation of its health services operation within three years from the opening date of the Facility and must maintain NCCHC accreditation for the life of the Contract.
- H. The Facility will house minimum, medium, and close custody adult male offenders as authorized by the Private Correctional Facility Act: 53-30-601 through 53-30-611, M.C.A. The Contractor shall comply with the provisions of 53-30-603, M.C.A. for housing inmates. In the event the law permits housing inmates, other than those assigned by the Department, the Department retains first option to house its inmates in the Facility.

### **SECTION III**

#### **Duration**

- A. The Operations and Management Contract will cover an initial term of four (4) years, scheduled to begin on September 1, 1999, and end on August 31, 2003. The parties may renew this Contract for eight (8), two (2)-year periods, all said periods subject to satisfactory evidence of contractual compliance. The total life of the Contract shall not exceed twenty (20) years.
- B. The parties shall mutually notify the other party in writing not less than 180 days prior to the expiration of the Contract of the party's intention to renew or not renew this Contract. Failure of a party to notify the other as set forth herein shall be construed as a decision not to renew this Contract.

- C. It is understood and agreed that this Contract is dependent upon appropriation of funds for this Contract by the Montana Legislature. Further, the parties recognize that the act of appropriation is a legislative act. The Department agrees to take such action as is necessary under the laws applicable to the State to timely and properly budget for and request the appropriation of funds from the Legislature of the State of Montana which will permit the Department to make all payments required under this Contract.

#### **SECTION IV**

##### **Conditions for Termination**

- A. The Contract will be subject to the following termination provisions prior to its expiration date. The Contract may be terminated by the Department for:

Default/Non-compliance  
Contractor Insolvency  
Unavailability of Funds  
Destruction/Condemnation

##### **1. Termination for Default or Noncompliance**

- a. If the Department determines that Contractor is determined to be in breach of any of the terms and conditions of this Contract, and such breach is not cured within 60 days of receipt of written notice thereof, Contractor shall be declared in default. The Department shall have the right by further written notice to terminate this Contract on any future date not less than 10 days from the date of such further notice. The parties, by written mutual agreement, may extend the time period for Contractor to cure a breach. Notwithstanding the foregoing, the Department may terminate this Contract immediately and without notice if there is an imminent threat of injury to life or property caused by a default by the Contractor of a term of this Contract.
- b. A breach of performance by the Contractor for which the Contract may be terminated may include, but is not limited to:
- i. a failure to comply with any federal, state or local law;
  - ii. managing the inmate population in such a manner as to jeopardize the public's, inmates' or employees' safety, and places the Department, the State and the public at legal risk;
  - iii. failure to perform the Contract according to its terms, conditions and specifications.



- c. The Contractor and/or its surety must be jointly and severally liable to the State of Montana/Department of Corrections for all loss, cost or damage sustained by the State of Montana/Department of Corrections as a result of the Contractor's default; provided, however that a Contractor's surety liability must not exceed the final sum specified in the Contractor's bond.

**2. Termination for Contractor Insolvency**

If Contractor applies for or consents to the appointment of a receiver, trustee or liquidator of itself or of all or a substantial part of its assets, files a voluntary petition in bankruptcy, admits in writing its inability to pay its debts as they become due, makes a general assignment for the benefit of creditors, files a petition or an answer seeking reorganization or rearrangement with creditors or, as a debtor, invokes or takes advantage of any insolvency law, or if an order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating Contractor a bankrupt or insolvent or approving a petition seeking reorganization of Contractor or of all or a substantial part of its assets, and such order, judgment or decree continues unstayed for thirty (30) days, then the Department may by written notice terminate this Contract effective on any future date specified in such notice. In the event of filing of a petition for bankruptcy by or against the Contractor, the Department shall have the right to terminate the Contract upon the same terms and conditions as termination for default.

**3. Termination for Unavailability of Funds**

In the event that funds for the Contract become unavailable, the Department shall have the right to terminate the Contract without penalty.

**4. Termination due to Destruction or Condemnation**

If the Facility is totally or extensively damaged by fire or other casualty so as to prevent or substantially limit Contractor's operations, or is condemned for public use by a legally constituted public authority, either party may upon written notice to the other within thirty (30) days of such casualty or such condemnation, terminate this Contract, effective as of the occurrence of the casualty or the effective date of the condemnation.

**5. Procedure on Termination**

- a. Upon delivery to the Contractor of a Notice of Termination specifying the nature of the termination, the extent to which performance of work under the Contract is terminated, and the date on which such termination becomes effective, the Contractor shall:
  - i. stop work under the Contract on the date and to the extent specified in the Notice of Termination;

- ii. place no further orders for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
  - iii. terminate all orders to the extent that they relate to the performance of work terminated by the Notice of Termination, except as may be necessary to avoid the occurrence of penalty assessments and the continuation of which the Department has approved;
  - iv. assign to the Department or a subsequent contractor, as the case may be, in the manner and to the extent directed by the Department all of the right, title and interest of the Contractor under the orders so terminated, in which case the Department or a subsequent contractor shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders;
  - v. with the approval or ratification of the Department, settle all outstanding liabilities and all claims arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provision of the Contract;
  - vi. transfer title to the Department (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the Department all files, processing systems, data manuals, or documentation, in any form, that relate to work terminated by the Notice of Termination;
  - vii. complete the performance of such part of the work as shall not have been terminated by the Notice of Termination; and
  - viii. take such action as may be necessary, or as the Department may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which the Department may acquire an interest.
- b. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item of reimbursable price under this provision.

## SECTION V

### Compensation and Adjustments

- A. The Department shall pay Contractor's per diem charge for each day or part of a day, including the first but not the last day in which an inmate is housed at the Facility.
- B. The per diem rate constitutes the sole and exclusive payment by the Department for the provision of all services provided herein, except as otherwise specifically provided in this Contract.
- C. All payments made under this Contract shall be made only upon submission by Contractor of an invoice specifying the amounts due and certifying that services requested under the Contract have been performed in accordance with the Contract. The invoices shall be submitted by Contractor each month for the fixed rate per inmate day of the preceding month and shall contain the names and inmate number (A.O.#) of all inmates in the custody of the Contractor and their date of incarceration at the Facility and date of release, if applicable. The Department shall pay each correctly submitted invoice within ten (10) days of receipt of invoice. The Department will make reasonable efforts to effect payment to Contractor by wire transfer in accordance with Contractor's written instructions.
- D. In consideration for all services provided, and barring any Contractor Compliance Assessment adjustments resulting from the Department's Contract monitoring processes, the Department will pay Contractor according to the following schedules:
  - 1. The Operations and Management per diem rate for the contract year ending June 30, 2000 shall be \$40.25 per inmate day for a total compensation estimated to not exceed \$623,875 per month, and \$7,365,750, for the period.
  - 2. The Operations and Management per diem rate for the contract year ending June 30, 2001 shall be \$41.34 per inmate day for a total compensation estimated to not exceed \$640,720 per month, and \$7,543,957 for the period.
  - 3. The Operations and Management per diem rate for the contract year ending June 30, 2002 shall be \$42.45 per inmate day for a total compensation estimated to not exceed \$658,019 per month, and \$7,747,644 for the period.
  - 4. The Operations and Management per diem rate for the contract year ending June 30, 2003 shall be \$43.60 per inmate day for a total compensation estimated to not exceed \$675,786 per month, and \$7,956,830 for the period.
  - 5. The Department will advance the Contractor six (6) months of the first year operating per diem in the amount of \$3,622,500. This advance will be made by no later than July 5, 1999. The Contractor agrees that this advance will be deducted from its monthly invoice beginning December of 1999 and ending May of 2000.

## **SECTION VI**

### **Contractor Indemnification**

The Contractor agrees to protect, defend, and save the State and any political subdivision, their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, or subcontractors under this agreement.

## **SECTION VII**

### **Responsibility for Habeas Corpus and Litigation Procedures**

- A. The Department shall defend Contractor, Contractor's subcontractors, representatives and employees in any habeas corpus or post-conviction relief action to the extent such action challenges the validity of the conviction or the sentence to the Montana Department of Corrections or the decision to transfer an inmate to the Facility. Except as provided herein, the Contractor's costs of legal services for protecting its interest in actions the Department has agreed herein to defend, shall be deemed usual costs incidental to the operation of the Facility.
- B. The Contractor shall notify the Department of any litigation filed by Department's inmates and served upon the Contractor by complete FAX copy within twenty-four (24) hours of service upon or receipt by the Contractor, and Contractor shall also mail copies of such documentation to the Department within such twenty-four (24) hour period. All such documents will be faxed and mailed to the Department's chief legal counsel in Helena, Montana.
- C. The Department shall notify the Contractor of any litigation filed by Contractor's inmates and served upon the Department by complete FAX copy within twenty-four (24) hours of service upon or receipt by the Department, and Department shall also mail copies of such documentation to the Contractor within such twenty-four (24) hour period. All such documents will be faxed and mailed to Linda Cooper, Vice President, Legal Affairs, Corrections Corporation of America, in Nashville, Tennessee.

## **SECTION VIII**

### **Insurances**

- A. General Insurance Requirements: Binders required by this section must be received within 10 days of the execution date of the Contract and copies of all certificates and endorsements must be received prior to the service commencement date. The Department reserves the right to require complete copies of all insurance policies at any time. All Insurance coverage must remain in effect for four (4) years following termination of the Contract.

- B. The Contractor must maintain for the duration of the Contract, at its cost, primary insurance coverage against claims for injuries to persons or damages to property including contractual liability which may arise from work performed under this Contract. This insurance must cover claims that may be caused by any act, omission, error, negligence, or failure to comply with the Contract, by the Contractor, its officers, agents, representatives, assigns, or servants; as well as all costs and expenses incurred by the State for defense of causes of action brought by or on behalf of an inmate that accrues while the inmate is incarcerated in the Facility. The insurance must provide coverage for any claim which accrued prior to termination of this Contract.
- C. The Contractor must require all subcontractors to obtain, maintain, and keep in force insurance coverage in accordance with the terms of the Contracts. The Contractor must sign a waiver which requires its insurance carriers to directly notify the Department of any and all changes in coverage or carrier, including but not limited to notices of intent to cancel coverage, cancellation of coverage, or requests to change coverage during the term of this Contract or during the term of subsequent contract renewal period(s).
1. **Liability Insurance:** The Contractor must provide and maintain commercial general liability, bodily injury liability, property damage and workers' compensation insurance, insuring the interest of all parties including additional insureds, from claims for bodily injury and property damage arising from the Contractor's operations whether such operations are performed by the Contractor or by any of its subcontractors.
    - a. The bodily injury liability insurance must pay on behalf of the insured all sums up to the limits provided by the policy which the insured is legally obligated to pay as damages caused by any occurrence, because of bodily injury, sickness or disease, including death.
    - b. Coverage must be extended to include civil rights violations, which will include all claims brought by any persons based in whole or in part on an alleged violation of the United States or Montana constitutions, statutes, or regulations, including but not limited to suits brought pursuant to 42 U.S.C. Section 1983. Coverage must also include medical and professional liability for employed nurses including all health care workers, doctors, attorneys, counselors, psychologists, social workers and teachers. If Contractor sub-contracts any health services to be provided on-site and does not indemnify sub-contractor, evidence of sub-contractor's current insurance coverage must be retained at the Facility.

Limits:           \$1 million combined single limits per occurrence  
                      \$3 million annual aggregate combined single limits per year
  2. **Property Insurance:** At its sole cost and expense, the Contractor must keep the building and all other improvements on the premises fully insured throughout the term of the Contract against the following hazards:

- a. Loss or damage by fire or other such risks in an amount sufficient to permit such insurance to be written at all times on a replacement costs basis. Such loss may be insured against by attachment of standard form extended coverage endorsement to fire insurance policies.
  - b. Loss or damage from leakage or sprinkler systems now or hereafter installed in any building on the premises.
  - c. Loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks, or similar apparatus now or hereafter installed in a building or buildings on the premises.
3. **Vehicle Insurance:** Automobile liability insurance must be Occurrence coverage with combined single limits of \$1 million per occurrence/\$2 million aggregate per year for bodily injury, personal injury and property damage. If commercial automobile liability insurance or another form with a general aggregate limit is used, either the general aggregate limit must apply separately or the general aggregate limit must be twice the required occurrence limit.
- B. Contractor's insurance coverage must be primary insurance in respect to the State, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the State, its officers, officials, employees, or volunteers shall be in excess of the Contractor's insurance and shall not contribute to it.
  - C. The Contractor must provide copies of all insurance coverage renewals to the Department's Contracts Manager annually.
  - D. All insurance coverages required by this section must be placed with an insurer with a Best's Rating of not less than A-.

## SECTION IX

### Contractor's Performance Bond

The Contractor will be required to purchase a performance security bond in the amount of \$1,836,406.25, the bond being equal to 25% of the per diem rate per inmate per day times 500 times 365. The performance bond will be renewed each year and shall be required throughout the term or renewal terms of the Contract. The \$1,836,406.25 performance bond covering the first contract year must be submitted to the Department's Contracts office no later than August 1, 1999.

## **SECTION X**

### **Right of Entry**

- A. The Department shall have a right to enter the premises at any time, with or without notice.
- B. The Department shall have the right to assume emergency control of the Facility if there exist substantial violations which affect the life, health, or safety of the inmates, Facility employees, or the public or that otherwise substantially impact the security of the Facility. If the Department assumes control of the Facility, the Department shall suspend payments to the Contractor.

## **SECTION XI**

### **Prevailing Wage and Preferences**

- A. The Contractor agrees to pay the applicable standard prevailing rate of wages as determined by the Commissioner of Labor and Industry, State of Montana for work performed by Contractor's employees or the employees of Contractor's subcontractors. Appendix I contains the current Montana standard prevailing rate of wages, including fringe benefits, and is incorporated herein by reference.
- B. Except for heavy and highway construction, the Contractor must pay 1) the travel allowance that is in effect and applicable to the district in which the work is being performed and 2) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Income Security Act of 1974 and other Bona fide programs approved by the United States department of labor and is in effect and applicable to the district in which the work is being performed.
- C. For heavy and highway construction, the Contractor shall pay the heavy and highway construction wage rates established statewide for the project.
- D. Contractors, subcontractors, and employers who are performing work or providing services under the Development Contract shall post in a prominent and accessible site on the project or work area, not later than the first day of work, a legible statement of all wages to be paid to the employees employed on such site or work area.
- E. Pursuant to Section 18-2-404, MCA, the Department will withhold the first \$1,000.00 of the Contract price of the Development Contract until termination thereof.

### **Preferences**

- A. The Contractor must give preference to the employment of Bona fide Montana residents.
- B. The Contractor must use Montana-made goods if they are comparable in price and quality to goods manufactured outside of Montana, as required by 18-1-112, M.C.A.

## SECTION XII

### Facility Administration

The Contractor shall confine and supervise Montana inmates which the Department has determined are suitable for transfer to Facility. Contractor shall furnish subsistence and all necessary routine medical, dental and mental health care; provide for the inmates' physical needs; provide programs, training and treatment which are consistent with individual needs; retain the inmates in safe, supervised custody; maintain proper discipline and control; make certain that sentences and orders of the committing court are faithfully executed; provide access to legal assistance for inmates of the Facility; and comply with all applicable federal and state constitutional requirements, laws, rules, regulations, ordinances and court orders.

- A. Subject to the terms of this Contract, it shall be Contractor's responsibility to ensure that its Warden has in place a method to facilitate communication, establish policy, explore problems, ensure conformity to legal and fiscal requirements and implement programs which from time to time the Department may request incorporated into Contractor's operation.
- B. The Contractor shall have a policy and procedure manual pre-approved by the Department which specifically describes its programs and services which it offers. The policy and procedure manual must be submitted to the Department for review and approval on or before May 1, 1999. Contractor's policies will generally be similar to Montana State Prison and Department policies to encourage consistent inmate management and treatment. Contractor may utilize its own procedures for policy implementation. The Department will review and provide approval or comments within 30 days of receipt of the policy and procedure manual. The policy manual shall be reviewed annually by the Contractor and updated when necessary. All revisions to the manual must be submitted to the Department for review and approval prior to implementation. The manual must be accessible to all employees and all revisions must be circulated to all employees prior to implementation.
- C. The Contractor must have a system in place to self-monitor its programs through inspections and reviews by the warden or designated staff.
- D. The Contractor shall, on an annual basis, review its Contingency, Emergency Response and Mutual Aid plans as required in Section XVI, Security and Control. The Contractor shall meet with the Department on an annual basis to review the plans.
- E. Within the first twelve (12) months of opening the Facility, the Contractor must file an action plan with the Department for achieving ACA accreditation within 3 years from date of opening. The Contractor must thereafter make application for and successfully achieve ACA accreditation by no later than September 1, 2002, which constitutes a period of 36 months of acceptance of the first inmate. The Contractor shall provide the Department with copies of all correspondence between ACA and



the Contractor as it relates to the Facility, within five (5) working days or receipt of said correspondence. If there exists a difference between the standards and state laws, the higher standard will be followed.

- F. The Department Contract Monitor(s) and other authorized Department employees/agents, including the Montana Legislative Auditor, shall have immediate, unlimited access at all times to all areas of the Facility. The governor and members of the Legislature shall be admitted into the Facility at any time. All such persons desiring access of the Facility shall be subject to Contractor's routine security inspection. Contractor shall be given reasonable advance notice to accommodate organized tours of the Facility.
- G. The Department's Contract Monitor shall be provided an office and furnishings including a dedicated telephone line for the sole use of the Department's Contract Monitor at no cost to the Department. The Department shall be responsible for long distance telephone call expenses. After assignment of such work space, no change in the Contract Monitor's work space or equipment shall be made by Contractor without the prior written consent of the Department. Contractor shall provide equipment for the use of the Contract Monitor(s) at no cost to Department.
- H. In the event of a conflict of standards, the most stringent standard shall apply.

#### **General Administration**

- A. The Contractor shall develop and implement a Forced labor and Earned Incentive Program consistent with that operating at MSP.
- B. The Contractor must have written policies which are implemented to ensure that no inmate or group of inmates is in a position of control or authority over other inmates.
- C. The Contractor must develop and implement written policies and procedures consistent with Department policy 4.1.3, Offender Personal Property, specifying the personal property that inmates may retain in their possession.
- D. Contractor must adopt MSP's No Tobacco Use Policy 1.3.101.
- E. All Facility rules and regulations pertaining to inmates must be conspicuously posted in the Facility housing units.
- F. The Contractor must develop and implement a plan for the dissemination of information about the Facility to the public, governmental agencies and the media. The plan must be made available to all persons upon request.
- G. The Contractor must develop and implement a written policy and procedure consistent with Department policy 3.3.4, Media Access to Offenders.

- H. The Contractor must develop and implement policies on incident reporting and self-monitoring of Facility standards.
- I. The Contractor shall establish an Inmate Welfare Fund whose operation substantially conforms to the Montana State Prison Inmate Welfare Fund.
- J. The Contractor will be responsible for replacing all equipment, perishables and supplies during the term of the Operations and Management Contract. At the conclusion of the Contract, all equipment will become the property of the State.
- K. The Contractor will be required to provide complete inmate laundry services. Inmates must be furnished prison uniforms and climatically appropriate outer-wear which must be re-issued as needed. Clean linen including pillow cases, sheets, blankets and towels must be provided to each inmate at least weekly, or sooner, if excessively soiled.
- L. The Contractor shall be responsible for all costs associated with a trial of an inmate for escape and for the trial of an inmate for the commission of any other crime committed in or at the Facility, as provided in 53-30-110, MCA .
- M. The Contractor shall submit a Facility Condition Inventory (FCI) to the Department annually, utilizing the format set forth in the attached Appendix V.

#### **Fiscal Management**

The Contractor must, on a timely basis, provide the Department with copies of all annual reports on Form 10-K, quarterly reports on Form 10-Q, and reports on form 8-K required to be filed by Contractor with the Securities and Exchange Commission.

#### **No Adverse Change**

On an annual basis, Contractor must certify by signature of its authorized representative, that since the date of the Contractor's most recent financial statements, there has not been any material adverse change in Contractor's business or condition, nor has there been any change in the assets or liabilities or financial condition from that reflected in the financial statements which is material to Contractor's ability to perform its obligations under this Contract. If requested, Contractor agrees to provide the Department with a copy of its most recent financial statement.

#### **Program Audits**

The Contractor must make available the necessary access to Facility, records, financial records, staff and inmates to enable the Department, the Montana Board of Pardons and Parole, or the Montana Legislative Auditor or other entities of the State, the opportunity to conduct periodic program reviews and/or Contract audits of the Facility and its programs.

## SECTION XIII

### Records and Information Systems

The Contractor will be required to maintain offender records and reports which conform to those of the Department in both format and content. The Contractor will be required to utilize the Department online offender management system and incorporate it into its operation as well as interface with the current information systems developed for and in use by the Department on September 1, 1999, to report and track inmate records information including inmate population census reporting. Contractor must maintain current and accurate inmate records.

A. The Contractor is required to provide a Local Area Network with Internet Protocol (IP) capabilities for access to and use of the Department's adult offender information system (AOIS) and the State's electronic mail system. AOIS is hosted by the Department's IBM AS/400 mid-range computer, supported by the Department's Information Services Bureau personnel. The Department is responsible for the total actual cost of maintenance and support of the AOIS system. All software used by the Contractor must be compatible with the current State Standards. State software standards currently used by the Department are WordPerfect, Lotus, Lotus Approach, Attachmate, and Zip!Office. The Department will alert Contractor concerning any projected change in the Department's software standards including effective dates for implementation.

B. Contractor will be required to pay connections fees to the Department. The ongoing monthly connection fees are based on the number of staff who will be participating in AOIS and/or Zip!Office. These fees are \$250.00 per month for less than 5 people and \$53.00 per month per person for five or more people. The \$250.00 per month fee does not include any of the connection software (Attachmate) or E-Mail software (Zip!Office). The \$53.00 per month charge includes the software and, in addition, provides support for the Desktop applications. The Department will periodically bill the Contractor for the actual cost incurred by the Department. All setup and installation costs will be the responsibility of the Contractor, if any are required. The

Department will provide at no charge to the Contractor, necessary and reasonable training and technical assistance associated with Contractor access to input into AOIS.

C. The Contractor's personnel responsible for data collection and input into AOIS will be required to attend on-site and/or periodic off-site training sessions provided by the Department relating to AOIS. The Department will charge Contractor for course materials and a \$25.00 administrative fee to cover processing applications and records. Only those Facility employees given security clearance by the Department may input and/or view data. All input data will be audited by the Department. Contractor will be responsible for assuring the accuracy of data input into AOIS, and will be responsible for costs attributed to ensuring and/or correcting incorrect or

inaccurate data. Data collection and input into AOIS must include, but is not limited to, the following transactions relating to inmates assigned to the Facility:

1. inmate movements (internal/external);
  2. custody classification;
  3. disciplinary infraction and sanctions;
  4. demographic information;
  5. scars and marks;
  6. aliases;
  7. address data for offender and family;
  8. risk and needs;
  9. military data;
  10. association information;
  11. legal data;
  12. electronic images;
  13. fingerprints;
  14. sentencing;
  15. treatment and education.
- D. Contractor will not allow inmates any access to AOIS or to reports generated from AOIS;
- E. Contractor will provide inmate access to the Internet in conformance with Department policies 1.6.13, Offender Access to Computers, and 1.6.16, Use of the Internet/SummitNet;
- F. Contractor will ensure all records and reports will be made available to any authorized person appointed by the Department or any other state agency having specific authority to inspect such records and reports; and
- G. Contractor must provide the Montana Board of Pardons and Parole any reports the Board requires concerning the conduct and character of any inmate in the Contractor's custody. The Contractor must provide any other facts deemed appropriate by the Montana Board of Pardons and Parole pertinent to any inmate.

#### **SECTION XIV**

##### **Personnel**

- A. Contractor shall at all times provide sufficiently trained staff to provide for and maintain the security, control, custody and supervision of inmates of the Facility in compliance with applicable court orders and this Contract. Contractor must comply with Federal and State laws related to employment and personnel practices. Montana residents must be given a hiring preference in the staffing of the Facility.
- B. The Facility staffing pattern shall, at a minimum, include the positions listed in Appendix II. with all positions staffed by qualified employees. It is understood and agreed that from

time to time a vacancy may occur in staff positions required by the staffing pattern. A vacancy in a position is defined to occur when the employee assigned to that position has resigned, been terminated, or is reassigned to another position, and no other qualified person or employee is available to perform the duties of that position. Contractor shall notify the Department Contract Monitor in writing within three (3) working days after the date a position becomes vacant. If a position is left vacant for more than thirty (30) days for security staff or sixty (60) days for all other staff, the Contractor will incur a financial penalty according to the Contractor Compliance Assessment Schedule contained in Appendix III. However, Contractor may, prior to the expiration of the thirty (30) and/or sixty (60) day period, request that the Department grant an extension of thirty (30) days. The request for extension must include: 1) evidence that the Contractor has diligently advertised the vacant position, and 2) copies of all applications or resumes submitted for the vacancy. The Department may, at its sole discretion, grant one thirty (30) day extension. The Contractor will not be assessed a financial penalty for failing to timely fill a vacant non-security position if the Contractor continues to provide the service by contracting for the provision of the service and the Contractor continues to exercise due diligence in filling the position.

- C. Background checks of all potential employees (including consultants, subcontractors and their employees and their agents, independent contractors and their employees and agents, and volunteer workers) are required and must be comparable with those required for Department employees. These include completion of a background investigation questionnaire and a criminal history records check. The Contractor must not hire any person with a prior felony conviction without the Department's approval.
- D. All potential employees must pass a drug test prior to beginning work at the Facility. The Contractor shall not hire a potential employee who fails a drug test. The Contractor must develop and implement a policy that will provide for pre-employment drug testing and ongoing random drug testing in conformity with State law.
- E. The Contractor must develop and implement written personnel policies for the Facility.
- F. Contractor must keep the Department informed as to work which Contractor subcontracts, including the names of the subcontractors. With cause, the Department reserves the right to reject any subcontractor.
- G. The Contractor must include a no-strike provision in any labor agreement that it negotiates with any union that is formed or joined by its employees at the Facility. The Contractor must use its best efforts to reach early and peaceful settlement to any labor dispute including but not limited to picketing, lockouts and strikes. The Contractor must have plans in place in accordance with Department Policy 3.2.1, Emergency Preparedness, to address staffing during a strike. The Contractor must notify the Department at least sixty (60) calendar days prior to the termination of any labor agreement with its Facility employees and must notify the Department immediately upon learning of a potential or impending strike or labor dispute at the Facility. In the event of a strike or labor dispute, the Department may call on available emergency resources to operate or control the Facility until the strike or dispute has ended. In the event of a strike or labor dispute, the Contractor must cooperate fully with the

Department to ensure safe operations and must reimburse the Department for any costs it may incur during or related to the strike or dispute.

## **SECTION XV**

### **Training**

- A. The Contractor must provide, at its expense, employee training programs substantially similar to those used by the Department. Contractor must have a written detailed training curricula plan which differentiates between training provided to different classes of employees (e.g., security, clerical). At a minimum the Contractor's employees must receive the same number of hours of pre-employment and in-service training, delivered in a like fashion (e.g., classroom instruction, on-the-job training, correspondence courses) as are required by ACA standards or Department policy 1.4.3, Training Standards, Requirements, Methods and Records, whichever is greater. The Contractor's correctional officer training curricula must be P.O.S.T. certified.
- B. The Contractor may not employ anyone who fails to comply with training rules or fails to satisfy applicable training requirements. Training instructors must meet or exceed the same minimum job requirements and qualifications as those employed by the Department. Detailed documentation records of all training activities must be maintained by the Contractor and made available to the Department.

## **SECTION XVI**

### **Security and Control**

- A. The Contractor must have a written Fire & Life Safety plan in accordance with Department policy 3.2.3, Fire, Life and Safety. All employees and inmates must be informed of and trained to this policy. Annual inspections by local or state fire officials must be conducted.
- B. The Contractor must have a written Emergency Response (Emergency Preparedness) Plan including appropriate procedures. Department will assist if necessary to ensure the Plan and procedures comply with the Department's Emergency Preparedness Policy. Contractor must have a written plan for dealing with inmate disturbances and hostage taking. Contractor must have a signed Mutual Aid Agreement in place with local law enforcement, fire and health agencies. Contractor's policy on the pursuit of escapees must be consistent with Department Policy 3.2.2, Facility/Program Escapes.
- C. The Contractor and Department shall develop a Contingency Plan by July 1, 1999, for transferring control of the Facility to the Department or another contractor upon termination or expiration of this Contract.
- D. The Contractor must adopt and implement Department policies 3.1.8, Use of Force and Restraints; 3.1.9, Use of Chemical Agents; 3.1.10, Use of Oleoresin Capsicum Spray in Correction Facilities/Programs; 3.1.16, Contraband Control (additional items of contraband may be identified and clearly defined in the Facility policy); and 3.1.17, Offender Searches.

- E. The Contractor must have a written plan to control movement within and outside of the Facility consistent with Department policy 3.1.11, Offender Movement Control. The Facility policy and procedure must account for the whereabouts of the inmates at all times. Contractor will be required to provide security at all times for inmates assigned to its custody. This includes, but is not limited to: inmate counts, court appearances, off-site medical appointments and hospital stays.
- F. The Contractor must have written procedures governing the transportation of inmates. The Contractor is responsible for all transportation and security functions including, but not limited to, the initial transfer of the inmate to the Facility, transfer of the inmate from the Facility to another correctional or detention Facility in the State of Montana, transportation for health care services, parole board hearings, disciplinary returns, and court appearances.
- G. Contractor must have a written policy and procedure which is consistent with the Department's policy 3.1.20, Standardized Offender Urinalysis Screening, for UA testing. A minimum of 10% of the population must be randomly tested each month and all costs of the program are the responsibility of the Contractor. The Contractor must provide the Department with a monthly report.
- H. Contractor's employees shall be allowed to use force only while on the grounds of the Facility, while transporting inmates, and while pursuing escapes from the Facility.
- I. Contractor's employees shall be authorized to use only the level of force which is consistent with the Department's policies 3.1.8, Use of Force and Restraints; 3.1.9, Use of Chemical Agents; 3.1.10, Use of Oleoresin Capsicum Spray in Correction Facilities/Programs; 3.1.16, Contraband Control (additional items of contraband may be identified and clearly defined in the Facility policy); and 3.1.17, Offender Searches.
- J. Contractor shall be responsible to prevent escapes from the Facility. The Contractor shall engage in hot pursuit of escapees within the property boundaries of the Facility until local or state law enforcement authorities have assumed control of the pursuit. Contractor shall immediately notify local law enforcement agencies, the Montana State Prison Command Post, and the Contract Monitor upon discovery of an unauthorized absence or escape. The Contractor shall be responsible for all costs associated with the pursuit and capture of an escapee and his transportation back to secure custody in the State of Montana. The Contractor shall develop a plan in conjunction with local law enforcement for the apprehension and reporting of escapes from the Facility.
- K. Contractor shall be responsible for all costs incurred by the State or any political subdivision of the State incurred as the result of escapes, riots, disturbances, or other natural or human caused events at the Facility.
- L. Contractor shall not permit any inmate to work outside the fenced perimeter of the Facility without the express written approval of the Department.

## **SECTION XVII**

### **Food Services**

- A. The Contractor must provide three meals including two hot meals for each inmate at regular meal times during each 24 hour period, with no more than 14 hours between the evening meal and breakfast. Variations may be allowed based on weekend and holiday food demands. Contractor must adopt and implement Department policy 4.3.6, Special Diets.
- B. Contractor's breakfast, lunch, and dinner menus must provide a minimum of 63 grams of protein and a minimum of 2,900 calories for each inmate during each 24 hour period. These amounts must conform, at a minimum, to the recommended dietary allowances provided by the National Research Council Food and Nutrition Board. The food service area must comply with state and local health regulations.
- C. Food service staff must develop and publish advance menu plans which are approved by a registered dietician. Copies of all menus served must be kept at the Facility with menu substitutions documented.
- D. Contractor must provide the following special diets in accordance with Department policy 4.3.6, Special Diets: low cholesterol; non-pork; modified vegetarian; strict vegetarian; low sodium; low sugar; modified consistency diet for geriatric inmates; and religious and specialized medical diets, including renal, gluten free, liquid, and diabetic diets.
  - 1. Contractor will provide a single menu for staff and inmates.
  - 2. All regular menus served will be based on the Recommended Dietary Allowances (RDA) for males aged 25-50 years as provided by the National Research Council Food and Nutrition Board.
  - 3. The Contractor must maintain adequate refrigeration, cooler and dry storage space to keep a minimum one-week food inventory supply on hand at the Facility.
  - 4. The kitchen and the dining area must be adequately ventilated, properly furnished and clean. A supervisor must conduct routine inspections on a weekly basis.
  - 5. Documentation at the Facility by state or local inspection authorities that food service facilities and equipment meet established governmental health and safety codes must be maintained. Deficiencies must be noted and corrected as quickly as possible and within a reasonable period of time.
  - 6. All food service personnel must have clean hands and fingernails; wear hair nets or caps; wear washable garments; must be in good health and free from communicable disease and open infected wounds; and must practice hygienic food handling techniques. All foods must be properly stored or disposed of as appropriate at the completion of each meal.



7. Contractor must adopt and implement Department policy 4.3.5, Food Service in Special Housing Units.

## SECTION XVIII

### Health Services

- A. Contractor will be responsible for providing 1) all medical, mental health, and dental services, including specialty clinics, 2) all medically related transportation, both routine and emergency, and 3) eyeglasses, hearing aids, dentures, and other prosthetics and limited use equipment.
- B. As part of the Facility per diem rate, Contractor shall provide infirmary care including, medical observation, post-operative care, isolation, administration of IV drugs, short term nursing care, suicide observation, seclusion and/or restraint for mental disorders, and chronic medical housing. Services provided on site shall include, reasonable health services including, medical, psychiatric, dental, vision, pharmaceutical, psychological, and other specialty services and health related services. At a minimum, these services must meet ACA and NCCHC standards, federal and state laws and regulations, and Department policies and procedures. At its expense, Contractor must achieve National Commission on Correctional Health Care accreditation of its medical care operation by September 1, 2002. Contractor must implement and conform to the Department's inmate medical co-payment procedures. All Inmate co-pay revenues must be reimbursed to the Department. To enhance with operational efficiencies, mitigate excessive cost to the Contractor and/or the Department, and reduce security risk, Contractor must, to the extent practicable, make health services available on-site at the Facility.
- C. Contractor shall provide, at a minimum, the following services, which are included as part of the Facility per diem rate:
  1. availability of twenty-four (24) hour a day, seven (7) day a week emergency medical, psychiatric and dental care;
  2. twenty-four (24) hour a day, seven (7) day a week on-site nursing care;
  3. twenty-four (24) hour a day, seven (7) day a week on-site availability of mental health services. Psychiatric and psychological services should be provided on-site. In the event the Contractor chooses to provide off-site psychiatric and psychological services, the cost shall be the responsibility of the Contractor.
  4. a health appraisal examination screening must occur at the Facility within twenty-four (24) hours of the receipt of inmates. Screening must be completed by health care personnel and must include, at a minimum, a review of the copy of the health care record accompanying the inmate and verification of any care or treatment requirements recommended by the Department.

5. the Department will provide complete health history records (medical records) which will accompany the inmate to the Facility. Contractor's non-health service staff must be informed of inmate's special medical problems within the boundaries of medical confidentiality. Contractor must keep all records current at all times, returning them to the Department when inmate is retaken by the Department.
6. daily triage of complaints, with those inmates referred for primary care physician services being seen within five (5) calendar days of the referral;
7. sick call to inmates in general housing at a minimum of five (5) calendar days per week. Inmates in segregated housing will be evaluated by medical personnel and afforded the opportunity to request and receive medical attention daily, seven (7) calendar days per week;
8. individual health (medical) records;
9. regularly scheduled chronic illness clinics will be conducted under the supervision of the medical service supervisor for the following conditions: diabetes, respiratory, cardiovascular, seizure disorder, tuberculosis preventive therapy, and immune-deficiency;
10. laboratory services by an accredited laboratory with "stat" laboratory work being performed by a local accredited provider. Only tests qualified under the current CLIA "waived test" listing will be performed on-site;
11. radiology services, with plain film studies performed on-site when appropriate and other procedures performed through contract with a local off-site provider;
12. on-site dental services based on routine, preventive care rather than complaint-oriented care. Routine care includes, but is not limited to, examinations, cleaning, extractions, relief of pain and infection, minor repair and adjustment of dentures, pulpotomies and root canals as medically indicated by a licensed dentist, fillings, and impressions;
13. a dental treatment plan for each inmate that includes prioritization of needs, counseling on oral hygiene, and conditions for which endodontic, periodontic, prosthetic, and prophylactic services will be provided;
14. pharmaceutical services, prescription and nonprescription drugs and supplies, with no on-site licensed pharmacy provided;
15. optometric services including eyeglasses when medically necessary, provided by qualified personnel. Inmates will be afforded the opportunity of requesting a complete vision exam and if necessary, replaced lenses and/or lenses and frames, every two years - more often if diabetic or presenting history of vision deficit.

16. health education program that addresses, at a minimum, hygiene, nutrition, physical fitness, stress management, sexually transmitted diseases, chemical dependence, AIDS, diabetes, and smoking;
  17. an OSHA exposure control plan will be developed by Contractor prior to Facility opening;
  18. health care specialists, including orthopedic
  19. medically necessary detoxification treatment of substance abusers;
  20. inpatient and outpatient hospital access;
  21. hospital emergency room access;
  22. provision of all on-site health care services including professional medical, physician, mental health, psychiatric, dental, vision, medication services and specialty clinics;
  23. participation by a member of the health services team in the classification process to ensure that no inmate is given a work or housing assignment contradictory to his medical condition
  24. psychological evaluations required by the board of Pardons and Parole
- D.** The Contractor shall ensure that any inmate identified as suffering from a major mental illness receives the appropriate mental health treatment required to address the inmate's needs. The use of psychotherapeutic medications shall not be used in lieu of counseling or other psychiatric services for an inmate unless part of a treatment plan initially prescribed by a physician or psychiatrist and reviewed monthly by a physician, psychiatrist, other qualified mental health professional, physician's assistant, or advanced nurse practitioner; or unless required in an emergency to prevent the inmate from causing injury to self or others, or being harmed by others within the Facility.
- E.** The Contractor shall not use physical restraints or segregated housing in lieu of counseling or other psychiatric services for an inmate suffering from a mental illness, unless part of a treatment plan prescribed and reviewed monthly by a qualified health care or mental health care professional, or unless in an emergency.
- F.** Contractor is responsible for the provision and cost of all medically-related transportation, both routine and emergency, for off-site services.
- G.** Contractor is responsible for providing the appropriate level of security at an off-site medical Facility.
- H.** Contractor is responsible for the first \$1,000.00 in all off-site health related services per inmate per state fiscal year which would otherwise be the responsibility of the Department. The Department is responsible for off-site health related services in excess of \$1,000.00 per

inmate per State fiscal year. All copies of provider invoices submitted to the Department for payment must be itemized with sufficient detail to justify the balance owing by the Department. Contractor must notify the Department of all hospitalizations exceeding 24 hours, on the first working day following said 24 hour period. Additionally, Contractor must notify the Department's Health Services Unit at 406-444-9839 of Emergency Room visits and obtain approval for all specialty services including diagnostic tests.

- I. The Contractor must use its best efforts to enter into and maintain cost reduction contract relationships with the hospital, clinic and specialty providers utilized by the Contractor for the provision of health care services. The Department will assist the Contractor, if necessary, to obtain cost reduction contracts.
- J. The Contractor must obtain prior written approval from the Department's managed care nurse of all scheduled (non-emergency) inpatient hospitalization and surgery if said scheduled admission will result in exceeding the per inmate annual deductible of \$1,000.00. Contractor must utilize the Department's managed care nurse to certify all hospital inpatient admissions. All unapproved inpatient hospitalization and surgery costs shall be the responsibility of the Contractor.
- K. The Contractor will not be responsible for inpatient hospitalization costs, including any surgery or specialty services, associated with the treatment of persons with Acquired Immune Deficiency Syndrome (AIDS), as defined by the Center for Disease Control. The Contractor shall, however, be responsible for hospitalization costs associated with other HIV infected patients to the same extent as required by sub-paragraph H above.
- L. The Contractor will not be responsible for the cost of providing medications therapeutically indicated for the treatment of AIDS or HIV infection. Such treatment will be at the Department's discretion and expense.
- M. The Facility must have first aid equipment, which meets community and NCCHC standards and which is available at all times for medical emergencies. Staff trained in emergency first aid procedures, including cardio-pulmonary resuscitation must be present on each shift. State licensing and certification requirements must apply to health care personnel working in the Facility to the same extent as they apply to equivalent personnel in the community. The Facility must make provisions for medical evaluation of any employee or inmate suspected of a communicable disease and/or exposure to potentially infectious bacteria.
- N. The Facility must have written policies regarding the possession and use of controlled substances, prescribed medications and over-the-counter drugs. The policies must stipulate that prescribed medications are administered according to the directions of the prescribing professionals. There must be written policies and procedures which specify that the records of all medications distributed by Facility staff will be maintained and audited monthly, and include the date, time and name of the inmate's receiving medication, and the name of staff distributing it.
- O. Written policies and procedures must provide for the prompt notification of resident's next of kin and the Department in case of serious illness, surgery, injury or death. Any death must

be reported immediately to the proper officials as specified in Department policy 4.5.12, Inmate Illness or Death Notification. A post-mortem examination must be conducted at the Contractor's expense on all inmates who die while in the custody of the Facility pursuant to 46-4-122(2)(a), M.C.A.

- P. All medical expenses resulting from the negligence or willful misconduct of the Contractor, subcontractor, its officers, agents, volunteers or employees, shall be borne by the Contractor.
- Q. Informed consent for health care and treatment must be obtained from inmates by medical services staff at the Facility. Such procedure must be consistent with Department policy 4.5.9, Continuous Quality Improvement. Contractor must also ensure that inmates have the right to refuse treatment consistent with Department policy 4.5.10, Level of Therapeutic Care.
- R. Contractor must implement suicide prevention plans including appropriate seclusion and/or restraints protocols according to a policy approved in advance by the Department.
- S. Medical personnel attending the inmate shall be authorized to make the determination concerning when emergency treatment is needed.
- T. Contractor shall provide Continuous Quality Improvement (CQI) information to Department's Medical Director, reflecting all time lines and quality of care.

### **SECTION XIX**

#### **Academic, Vocational, Counseling & Recreational Services**

Academic and vocational programs must be comparable to courses offered at Montana State Prison in order to provide a continuum of training for transferred inmates.

#### **Academic, Vocational Services**

- A. The academic services that Contractor will provide at the Facility include Adult Basic Education and General Education Degree preparedness. Contractor's education programs will operate a minimum of two (2) three hour per day sessions and provide academic instruction to a minimum of 30 % of the population. Each student will enroll in either a morning or afternoon block. After Facility expansion, Contractor will add another three hour block to be held in late afternoon or evening.
- B. The Contractor must provide sufficient vocational courses for a minimum of 20% of the inmate population. Vocational courses must be established in cooperation with the Department. Vocational programs will be provided, at a minimum, in two (2) three hour per day sessions with individual inmates enrolling in one of the two sessions. Contractor will provide *Wheels of Learning* approach to vocational education in the construction and building trades.

## **Counseling**

Programs must be consistent with those offered by the Department and required by the courts and the Montana Board of Pardons as a condition for parole. These include, at a minimum: chemical dependency, anger management, cognitive restructuring, substance abuse treatment and sex offender treatment.

- A. Contractor will provide to inmates who qualify, Contractor's *LifeLine Therapeutic Community* program. The program is divided into three phases: Orientation (60 hours over 28 days), Community class (12-14 weeks) and Senior Phase/Re-Entry Phase (4-8 weeks).
- B. Chemical dependency treatment programming must include examination of criminal personality issues and its role with addiction and should have a strong emphasis on relapse prevention. The Contractor must adhere to the Montana Department of Public Health and Human Services Addictive, Mental Disorders Division, for chemical dependency rules for correctional facilities. Programming shall be provided to inmates who have a court order requiring completion of such a program, whose crime involved drugs or alcohol, who have a history of substance abuse, who volunteer and have an assessment of chemical dependency, or who have been ordered to complete chemical dependency counseling by the Montana Board of Pardons and Parole.
- C. Sex offender treatment programming shall include Phase I, Phase II, including the Orientation Group and Phase III, Aftercare. Contractor should use a cognitive-behavioral approach and adhere to Montana Sex Offender Treatment Association (MSOTA) Standards when providing treatment. Counselors must be eligible to be certified by MSOTA.
- D. Anger Management/Dispute Resolution programming will be provided for appropriate inmates. The course lasts ten weeks and includes; Introduction, Cues and anger reducers, external and internal triggers, developing strategies to incorporate anger reducers in day-to-day-situations, developing effective self-rewarding and self-coaching techniques, understanding short term and long term consequences; identifying and changing anger-provoking behavior, rehearsal of full sequence "win-win" behavior, overall review and reinforcement.
- E. While the inmate is housed at the Facility, Contractor shall provide sufficient counseling resources and personnel to ensure that any court-ordered counseling requirements for the programs listed in subsection (1) may be completed prior to the initial parole eligibility date of an inmate.

## **Recreation and Hobby**

Contractor must provide adequate opportunities for physical exercise. The recreational program will include indoor, outdoor and hobby activities. The type and level of activities

must meet ACA Standards. Contractor must generally conform to and provide hobby privileges consistent with Montana State Prison Policy 22-002.

### **Religious Activities**

Contractor must provide religious programs and activities for inmates. Contractor shall specifically provide for religious programs for Native Americans.

## **SECTION XX**

### **Inmate Industry Programs**

Contractor must provide 10,000 square feet of space exclusively for utilization by Montana Correctional Enterprises (MCE) industries programs. Contractor will also provide inmate labor for MCE industries programs, as well as management and supervisory personnel. Contractor may not compete with or duplicate the Department's existing industry programs. All profits from the correctional industry programs will be retained by the Department and deposited in the MCE proprietary account to be used for expansion and improvement of the industry programs. At the conclusion of this Contract, all funds in the account will be retained by the Department.

## **SECTION XXI**

### **Inmate Work and Pay**

Inmates shall be required to work. Inmate workers must receive pay comparable to that received by inmates in Department facilities and consistent with Department policy. Funds for institutional workers pay are included in the per diem rate as set forth in Section V. Payment to inmates employed in the MCE industries programs will be the responsibility of MCE.

## **SECTION XXII**

### **Inmate Orientation**

The Contractor shall provide orientation to inmates which includes, but is not necessarily limited to, a handbook containing information on: rules, penalties and offenses, disciplinary procedures, access to courts and attorneys, mail, telephone, grievances, medical care, religion, and programs available. Inmate orientation must be conducted within one week after arrival at the Facility and must be documented by employee and inmate signatures.

## **SECTION XXIII**

### **Mail, Visitation**

- A. Contractor must adopt and implement Department policies: 5.4.1, Offender Correspondence; 5.4.2, Incoming Publications; and 5.4.3, Inmate Access to Telephones; and 5.4.4, Offender Visiting.

- B. Contractor must provide physical space, furniture, equipment and supervision for contact and non-contact visitation in accordance with applicable ACA Standards.

#### **SECTION XXIV**

##### **Inmate Rights**

- A. Contractor must provide the inmates the opportunity to voluntarily practice their own religious activities, subject only to those limitations necessary to maintain the order and security of the Facility. Inmates may not be required to attend or participate in religious services or discussions.
- B. Contractor must adopt and implement Department policy 3.3.3, Offender Grievance Procedures. Contractor must provide the Department with copies of all inmate grievances monthly, along with statistical information on number and type of grievances received as required by the Department.
- C. Contractor must adopt and implement Department and MSP Policy 3.4.1, Adult Institutional Discipline Policy. Disciplinary offenses and penalty codes must be posted in each inmate living area and other appropriate areas accessible by inmates. Contractor must provide the Department with copies of all documentation concerning Severe and Major disciplinary actions taken by the Contractor against inmates on a weekly basis. Contractor shall also provide statistical information on the number and types of disciplinary reports and their dispositions on a monthly basis. The Department shall have final authority to approve, amend, or disapprove disciplinary actions by Contractor.
- D. Contractor may, in conjunction with disciplinary proceedings, make recommendations for the forfeiture of good time credits to the Department. A decision to forfeit good time credits is at the sole discretion of the Department.
- E. Contractor must provide inmates with assistance in accessing the courts. Contractor shall contract with an attorney to assist inmates in the drafting and filing of complaints, post-conviction petitions, sentence review applications, notice of appeal and habeas corpus petitions. The contract shall substantially conform to the terms of the contract between the Department and its contract attorney, which is attached hereto as Appendix IV.

#### **SECTION XXV**

##### **Inmate Telephones/Commissions**

- A. The Contractor must contract with a public or private telephone company to provide coinless, collect telephone service to the inmate population. The telephone service contract must be submitted to the Department for its review and approval prior to acceptance by the Contractor. Rebates/commissions or other compensation received by Contractor from the telephone company must be directed to a separate Inmate Welfare fund account. Copies of source documentation supporting said rebates/commissions must be available for Department review.



- B. Monies received from use of inmate phones must be deposited in a separate account and utilized for inmate rehabilitative needs, in conformity with the Montana State Prison Inmate Welfare Fund.
- C. The telephone service shall include the capability to monitor and record inmate conversations, the ability to ensure that certain phone numbers cannot be monitored, and the ability to control what phone numbers an inmate may access. The cost of the telephone service to the inmate must be comparable to the cost at similar Department facilities.

## SECTION XXVI

### Inmate Commissary/Canteen

The Contractor must make canteen items available to inmates. Canteen items must substantially conform to Montana State Prison canteen items. Prices charged for items should be comparable to those charged in Department facilities. The Contractor must provide suitable space, utilities and equipment to provide canteen items. Separate financial records and accounts must be maintained by the Contractor for all canteen business. The Facility commissary/canteen system must interface with the facilities' inmate banking system. Contractor is responsible for all programming costs, including security costs, and all communication links. All profits from the canteen operation must be deposited in a separate account and utilized for inmate rehabilitative needs, in conformity with the Montana State Prison Inmate Welfare Fund. The Department shall have final authority to approve or disapprove use of the funds in this account. Quarterly financial statements - balance sheet, income statement - of the inmate canteen operation including Contractor and subcontractor, if applicable, must be submitted to the Department with a detailed listing of all expenditures for inmate benefits. A quarterly itemized statement of all receipts and disbursements of the Contractor's inmate canteen account must be made available to the Department's Contract Monitor no later than the 15th day of the following month. Employment practices and operating procedures, etc., must be consistent with those employed at similar Department operated prisons. The Contractor must be responsible for providing necessary administration services to the canteen operation. Canteen operations must be audited annually by a Certified Public Accounting firm. The expense of the annual audit of the canteen must be borne by the canteen.

## SECTION XXVII

### Classification and Transfer

- A. Inmates will be assigned to the Facility and assigned a custody classification by the Department. The Contractor must utilize Department policies 4.2.1, Offender Classification Procedures, 4.2.2, Special Needs Offenders, and other Department classification and housing policies as developed. The Contractor has no authority to transfer, discharge or release an inmate without the prior written approval of the Department. The Department has final authority with respect to any transfer, discharge or release decision.
- B. Inmates placed in the Facility may not be reduced to a classification of lower risk unless mutually agreed to by the Department and Contractor consistent with the policies and

procedures of the Department. The Contractor will be required to perform a custody reclassification review every six (6) months. Contractor shall provide the Department with a summary of reclassification decisions on a monthly basis.

- C. The Contractor will be responsible for preparing, maintaining and providing parole reports, progress reports and disciplinary records to the Department and/or the Montana Board of Pardons and Parole.
- D. The Department shall be solely responsible for the calculation of sentence discharge dates and parole eligibility dates. No inmate shall be discharged from the Facility without written authorization from the Department.
- E. Contractor shall be responsible for providing all necessary services related to the discharge of an inmate, including but not limited to, arranging transportation, property removal, and provision of suitable clothing and the payment of "gate money" as provided in 53-30-111, MCA. The Department will reimburse the Contractor for gate monies paid pursuant to the procedure set forth in Section V, Compensation and Adjustments.

## **SECTION XXVIII**

### **Communications**

The Facility warden or designee will ensure the Montana State Prison Command Post receives daily verbal/telephone reports to at least include severe, major and minor disciplinary infractions; count; escapes or attempted escape; all temporary lock-up incidents; disturbances; identification of inmates in administrative segregation and length of stay; inmate-on-inmate assaults; assaults on staff; use of force; personnel actions; contraband seizures, including weapons, drugs and alcohol; and off-site or medical transport.

- A. Daily telephone reports will be made at 8:00 a.m. to the MSP Command Post at 406-846-1320, extension 2250. Written reports, including incident reports requested by the Command Post will be faxed to MSP at 406-846-2913 and to Department central office, Public Affairs Officer, at 406-444-4920.
- B. In addition to the foregoing, within four (4) hours of an assault, severe or major disciplinary infraction, contraband seizure, off-site or medical transport, disturbance, escape, or use of force, Contractor will fax incident reports to the Department Central Office at 406-444-4920, and to MSP at 406-846-2913.
- C. Any additional incident reports requested by the Department will immediately be faxed to the numbers noted in #2 above.
- D. Video tapes of incidents will be sent upon request to the Department within three (3) days of the request.
- E. Contractor will increase the frequency of telephone reporting upon request of the Department.

- F. Contractor will designate and provide a listing of on-site key personnel responsible for the effective exchange of information.
- G. Open communications will be established between Contractor's investigators and Department's investigators to inform of potential and ongoing criminal investigations.

## **SECTION XXIX**

### **Indigent Inmates**

The Contractor shall provide inmates who are indigent with personal health and welfare items in accordance with Montana State Prison Policy MSP 12-002, "Indigent Packages". The Contractor shall provide indigent inmates with legal postage and materials in accordance with Montana State Prison Policy MSP 14-001, "Indigent Legal Postage and Materials". The costs associated with providing these health, welfare, and legal items is included in the inmate per diem rate set forth in Section V, Compensation and Adjustments.

## **SECTION XXX**

### **Furnishings, Fixtures and Equipment**

- A. The Contractor shall maintain and replace all FF&E to operate the Facility for its intended purpose, including FF&E for the Department's Contract Monitor. The Contractor will be required to safeguard, maintain and account for all FF&E at all times and to turn them over to the Department, or the next Contractor, as the case may be, in good condition, except for reasonable wear and tear. FF&E will remain property of the Contractor except in the event of termination and/or expiration of the Contract.
- B. If replacement FF& E is available through the Department's MCE, the Contractor shall grant MCE the right of first refusal to meet the quality, price and delivery time of FF&E required by the Contractor. If MCE can meet requirements as to quality, price and time of delivery, the Contractor must purchase the FF&E from MCE. The Department will ensure that Contractor is provided with a current copy of the MCE catalogue and all updates to it as they are released.
- C. If any FF&E installed requires software systems to operate and/or maintain the Facility, the Contractor must obtain a license which allows the State or subsequent Contractor to use the software for the operation of the Facility and it must be transferrable without cost or restriction to the State or subsequent contractor.
  - 1. All software, hardware and firmware purchased and/or leased by the Contractor which used prior to, during or after the calendar year 2000, shall include, at no added cost to the State, design and performance so that there is no experience of software abnormality and/or generation of incorrect results from the software due to date oriented processing.

2. The software, hardware and firmware design to insure year 2000 compatibility must include, but is not limited to: date structures (databases, data files, etc.) That provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates the same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; use interfaces (i.e. screens, reports, etc.) That accurately show four (4) digit years; and assurance that the year 2000 will be correctly treated as a leap year within all calculation and calendar logic.

### **SECTION XXXI**

#### **Liaison/Contacts/Contract Monitor**

- A. In order to effectively administer this Contract, each party shall appoint contact persons.
  1. The Contact Persons for the Department are:

Operational Issues: Contract Monitor  
Contract Issues: Contracts Manager  
Notice/Litigation: Department's Chief Legal Counsel
  2. The Contact Persons for the Contractor are:

Operational Issues: Facility Warden  
Contract Issues: Vice President of Legal Affairs  
Notice/Litigation: Vice President of Legal Affairs
- B. Replacement of the individuals named herein may be accomplished by written notice to the other party. All notices, reports, billings and correspondence to the respective parties to this Contract shall be sent to the addresses listed above.

### **SECTION XXXII**

#### **Governing Law:**

The laws and administrative rules and regulations of the State of Montana shall govern in any matter relating to any inmate confined pursuant to this Agreement.

### **SECTION XXXIII**

#### **Contractor Status**

The Contractor shall perform its duties hereunder as an independent Contractor and not as an employee. Neither the Contractor nor any agent or employee of the Contractor shall be

or shall be deemed an agent or employee of the Department. Contractor shall have no authorization, express or implied, to bind the Department to any contracts, liability or understanding except as expressly set forth herein.

#### **SECTION XXXIV**

##### **Assignment**

- A. No right or interest pursuant to this Contract shall be subcontracted, assigned or delegated by the Contractor without the prior express written permission of the Department.
- B. In the event that permission is granted and some or all of the services are subcontracted or assigned, the Contractor shall guarantee that the subcontractor, assign, or delegee will comply with all of the provision of this Contract.

#### **SECTION XXXV**

##### **No Third-party Beneficiary Enforcement**

It is expressly understood and agreed that enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, shall be strictly reserved to the Department and the Contractor, and nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other person. It is the express intention of the Department and the Contractor that any entity, other than the Department or the Contractor receiving services or benefits under this Contract, shall be deemed an incidental beneficiary only.

#### **SECTION XXXVI**

##### **Venue**

This Contract is governed by the laws of Montana. Section 18-1-401, M.C.A., states that district courts of the State of Montana have exclusive jurisdiction on contract claims. The parties agree that any mediation, arbitration or litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana.

#### **SECTION XXXVII**

##### **Severability**

- A. If any term or condition of this Contract shall be held to be invalid, illegal or unenforceable, this Contract shall be construed and enforced without such provision, to the extent this Contract is then capable of execution within the original intent of the parties.

- B. If, however, the Department determines that the invalid provision or provisions are essential to the purpose or performance of the Contract, it may terminate the Contract. Such a termination shall be deemed a termination for cause.

#### **SECTION XXXVIII**

##### **Risk of Physical Damage to Facility**

The risks and costs of physical damage to the Facility incurred as a direct result of the placement of Montana inmates in the Facility shall be considered usual costs incidental to the operation of the Facility and part of the costs reimbursed by the fixed rate per-inmate day as provided by Section V.

#### **SECTION XXXIX**

##### **Force Majeure**

Neither party shall be deemed to be in default for any delay or failure to perform under this Contract if such delay or failure to perform results from an act of God, civil or military authority, or other occurrence beyond that party's control, provided however, that the Contractor's security obligations under this Contract do not end in the event of an inmate disturbance, riot or other incident. A Force Majeure incident may not be caused by or under the control of the party asserting it and the excused party is obligated to promptly perform in accordance with the terms of this Contract after the intervening cause ceases.

#### **SECTION XXXX**

##### **Compliance with Applicable Laws**

The Contractor shall, at all times during the performance of its obligations of this Contract strictly adhere to all applicable ACA and NCCHC Standards; local, state and federal laws and regulations, including protection of the confidentiality of all applicant/recipient records, papers, documents, tapes or any other materials that have been or may hereafter be created which relate to this Contract. The Contractor acknowledges that said laws include, but are not limited to: Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1972, the Education Amendments of 1972, the Age Discrimination Act of 1975, the Americans With Disabilities Act, including Title II, Subtitle A, 24 U.S.C. Sec. 12101, et seq. and all rules and regulations applicable to these laws prohibiting discrimination because of race, religion, color, national origin, creed, sex, age or handicap.

#### **SECTION XXXXI**

##### **Confidentiality of Records**

Unless otherwise provided, and where appropriate:

- A. In the event the Contractor shall obtain access to any records or files of the Department in connection with this Contract, or in connection with the performance of its obligations under this Contract, the Contractor shall keep such records and information confidential and shall comply with all laws and regulations concerning the confidentiality of such records to the same extent as such laws and regulations apply to the Department.
- B. Contractor shall specifically keep confidential all records and files of Department inmates; Contractor shall obtain prior written approval from the Department before releasing or disclosing the contents of any such records or files. Contractor further acknowledges that this requirement is in addition to and not in lieu of any other laws respecting confidentiality of inmate and criminal justice files and records.
- C. Contractor agrees to notify and advise in writing, all employees, agents, consultants, licensees, or subcontractors of the said requirements of confidentiality and of possible penalties and fines imposed by violation thereof, and secure from each an acknowledgment of such advisement and Agreement to be bound by the terms of this Contract as an employee, agent, consultant, licensee or subcontractor of the Contractor, as the case may be.
- D. Any breach of confidentiality by the Contractor or third party agents of the Contractor shall constitute good cause for the Department to cancel this Contract, without liability. Any records and files delivered to the Contractor shall be returned to the Department.
- E. Any Department waiver of an alleged breach of confidentiality by the Contractor or third party agents of the Contractor is not to imply a waiver of any subsequent breach.

#### **SECTION XXXXII**

##### **Headings:**

Headings herein are for convenience of reference only and shall not be considered in any interpretation of this Contract.

#### **SECTION XXXXIII**

##### **Time of the Essence:**

Time is of the essence in the performance of all of the parties' obligations and duties under this Contract.

#### **SECTION XXXXIV**

##### **Modification and Breach**

This Contract contains the entire agreement and understanding between the parties and no statement, promise or inducement made by either party or agents thereof which are not contained in the written Contract shall be binding or valid. This Contract shall not be enlarged, modified or altered except upon written agreement signed by all parties to the Contract.

#### **SECTION XXXXV**

##### **Alternate Dispute Resolution**

Any dispute between the parties concerning any and all matters related to this Contract will be resolved as follows:

- A. Step 1: Each party will appoint a person who shall be responsible for administering the resolution procedures regarding claims. Those appointed persons shall attempt to settle such claim. If they are unable to resolve the claim within thirty (30) days after either party notifies the other that the claim has been referred for resolution, either party may declare that an impasse has been reached and proceed to Step 2.
- B. Step 2: Upon declaration of an impasse, the parties will seek mediation by a certified civil mediator who will be agreed to by the parties or, if the parties cannot agree to a mediator within thirty (30) days of the decision to mediate, said mediator will be chosen by the party seeking mediation. The cost of the mediation will be split equally between the parties.
- C. In the absence of an agreement to the contrary by the parties, the mediation process shall be conducted in accordance with the Center for Public Resources Model Mediation Procedures of Business Disputes. the mediation shall conduct all hearings and meetings in Helena, Montana, and, within thirty (30) days of appointment, shall notify the parties in writing of the decision stating separately findings of fact and determinations of law. If non-binding mediation does not resolve the dispute, parties may proceed to Step 3 set out herein.
- D. Step 3: Either party may seek the remedy available under law.

#### **SECTION XXXXVI**

##### **Contractor Compliance Assessment**

- A. In the event that the Contractor fails at any time following September 1, 1999, to perform or comply with the terms and conditions of this Contract or any applicable court order, the Contractor agrees to pay a Contractor Compliance Assessment as determined by the formula



set forth in Appendix III, which is incorporated herein by reference. The procedure for assessing a fine for non-compliance by the Contractor is as follows:

- B. The decision to assess the Contractor a Contractor Compliance Assessment and the amount of any Assessment shall be the sole discretion of the Department.
- C. The Department's Contract Monitor will prepare a Notice of Non-Compliance which will identify each instance of non-compliance with this Contract. The Department will grant the Contractor a reasonable time, typically 60 days, to rectify the noncompliance. Notwithstanding the foregoing, in the event that the Contractor has previously been notified about a similar instance of non-compliance, the Contract Monitor may, in his or her sole discretion, assess a fine as provided for herein without providing the Contractor an opportunity to rectify the non-compliance.
- D. If the Contract Monitor determines that the Contractor has not rectified the non-compliance within the time period specified, the Contract Monitor shall prepare a Notice of Non-Compliance and Assessment of Fine (hereafter "Notice of Assessment"). The Notice of Assessment shall identify each instance of non-compliance which was not rectified in the requisite period of time, along with the amount of the fine assessed for each instance of non-compliance. Notwithstanding the foregoing, if the Contractor fails to rectify any non-compliance, the Department, in its sole discretion, may declare the Contractor in breach of the Contract and the Department may, at its sole discretion, terminate the Contract no less than 10 days from the date of Contractor's failure to cure the non-compliance.
- E. The Department's Contract Monitor will mail the Notice of Assessment to the Contractor's contact person, certified, return receipt requested.
- F. If the Contractor disputes the assessment, the Contractor shall mail a Notice of Disputed Assessment to the Contract Monitor within 10 days of date of receipt of the Notice of Assessment, and said Notice of Disputed Assessment shall be mailed certified, return receipt requested. The Contractor must specifically indicate the basis for its dispute with the finding of non-compliance and the assessment of fine, and must provide supporting documentation. If the Contractor fails to dispute the finding of non-compliance and assessment of fine within the 10 days, or fails to provide a basis and/or documentation as required by this paragraph, the Contractor waives the right to contest the assessment of non-compliance and fine by the Department.
- G. The Department shall have 10 days from receipt of Contractor's Notice of Disputed assessment to reconsider the assessment of the fine. If the Department does not respond to the Contractor within said 10 days, the Department will be considered to have affirmed the assessment of the non-compliance fine. The Department's action or inaction as set forth in this paragraph shall be considered its final decision.
- H. In the event that the Department's final decision is to assess a fine, the amount of the fine shall be deducted from the next payment made to the Contractor by the Department.

- I. If the Contractor is not satisfied with the final decision of the Department, the Contractor may utilize the Alternate Dispute Resolution procedure provided for in Section XXXV, Alternate Dispute Resolution, of this Contract.
- J. In the event that the Contractor is determined not liable for the fine, the Contractor shall be reimbursed the amount of fine, plus interest at a rate equal to the short term investment pool rate (STIP).
- K. In assessing a fine, the following conditions shall apply:
1. The Contractor shall be assessed a fine for each day of non-compliance.
  2. In the event that an instance of non-compliance may reasonably be assigned to two or more Operation Areas, the Contract Monitor shall have sole discretion to determine the appropriate Operation Area to assign the non-compliance.
  3. In the event that the cause or type of an instance of non-compliance may reasonably be assigned to two or more causes or types, the Contract Monitor shall have sole discretion to determine the appropriate Operation Area to assign the non-compliance.
  4. Each instance of non-compliance may be assessed a fine.
  5. Referring to Appendix III, the amount of fine assessed for each instance of non-compliance will be determined as follows:
    - a. The Contract Monitor shall determine which clause of the Contract with which the Contractor has not complied, and determine the Operation Area assigned to that clause. This determination shall determine the value for "V".
    - b. The Contract Monitor shall determine the type or cause of non-compliance from the column entitled "Contractor Breach" under the appropriate Operation Area. This determination shall determine the value for "B".
    - c. The Contract Monitor shall multiply "V" times "B" times \$50.00 times each day of non-compliance to determine the amount of fine to assess. For example, if the Contract Monitor determines that the Contractor has only provided one hot meal on three separate days, in violation of Section XVII, paragraph A, the appropriate Operation Area Value, or "V" is 3; and the type or nature of the non-compliance is a failure of staff, for a "B" value of 4. The amount of fine would be 3 times 4 times \$50.00 times 3 days, or \$1800.00.

- L. Notwithstanding the foregoing, CCA shall not be assessed a Contractor Compliance Assessment for the failure to meet an ACA or NCCHC Standard prior to Contractor's accreditation by the ACA or NCCHC; provided; however, that the Contractor shall attain ACA and NCCHC accreditation no later than September 1, 2002.
- M. A Contractor Compliance Assessment shall not be assessed if the failure of the Contractor is the result of the acts or omissions of the Department.

#### **SECTION XXXXVII**

##### **Changes**

The Department and Contractor, can by written approval between both parties, make changes within the general scope of the Contract. If any change of scope causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under the Contract, a mutually satisfactory adjustment must be made in the Contract and must be modified in writing accordingly.

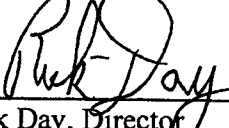
#### **SECTION XXXXVIII**

##### **Completed Contract**

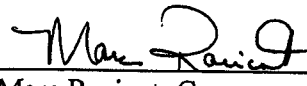
This Contract contains 43 pages plus five appendices. The Department cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Director's Office, Department of Corrections, 1539 11th Avenue, Helena, Montana 59620-1301.

**SIGNATURES:**

**DEPARTMENT**

  
Rick Day, Director  
Department of Corrections


7-22-98  
Date

  
Marc Racicot, Governor  
State of Montana

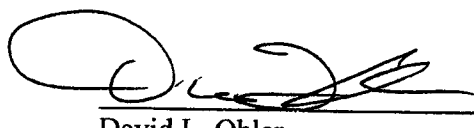
7-22-98  
Date

Approved for Legal Content by:

**CONTRACTOR**

  
Doctor Crants, Chairman/CEO  
Corrections Corporation of America

7-22-98  
Date

  
David L. Ohler  
Chief Legal Counsel  
Department of Corrections

7/22/98  
Date

2. Inmates will not be allowed to visit each other at their assigned bunks at anytime. Inmates need to be respectful of others and keep the noise at a minimum.
3. No chairs will be allowed in the sleeping area. If chairs are found they will be removed from S-Dorm and will not be replaced.
4. All items will be stored in the property boxes. All inmates must keep their property boxes under the bottom bunk. There is to be no property boxes/property in the walkway or on the TV racks. Jackets may be kept under the mattress folded if not stored in the property box.
5. From the hours of 0800 to 1700 all inmates in the dayroom will be required to wear full reds. Shirts are not required to be tucked in upon ending of group while in the day room.
6. Bunks must be made if not being used and bunk area kept orderly, neat and clean at all times. This includes prior to exiting the Dorm for Chow, Recreation and Education. (No inmates will leave the dorm until the bunks are made.)
7. Excess shoes may be placed on property box or under bunk, they must be kept out of the walk areas.
8. Flip-flops or shower shoes may be worn to and from the shower or ice machine only. May also be worn in Dayroom as long as socks are worn.
9. Tenting is not allowed, to include hanging wet towels from the bunk ladders except on the designated hook.
10. During the hours of 0700-2200 the lights in the sleeping area will be turned half way on and the lights in the dayroom will be at full lights. From 2200-0700 the lights in the sleeping area will be turned off and the dayroom lights will be at half way. During all emergencies or as security deems necessary all lights may be turned on.
11. A calendar and up to (4) four photos may be placed on the wall for wall bunks only. This is to be kept to a minimum due to space available. Center bunks will not be allowed to display their photos and must be stored in their property boxes.
12. The hours of 2240-0500 have been deemed quite time. There will be no talking/visiting or showers during this time. Inmates will be allowed to play SOLITARY games/cards, write letters or read at the dayroom tables. All TVs will be muted during these hours.
13. At no time will pacing (i.e. walking the track) be allowed in the sleeping area.
14. It is the inmates' responsibility to take necessary items (towels, soap, and toilet tissue) to the shower, sink or toilet area.
15. Telephone usage will not be allowed during lockdown hours (including count times, 2250 until 0530 Sunday through Thursday and 0030 until 0530 on Friday and Saturday).
16. Electrical conduit, cable boxes, electrical outlets are NOT TO BE USED for hanging ANYTHING on. This is to include laundry bags, towels, wash cloths, etc., etc.

***These rules are subject to change and you will be notified of all changes.***

#### **Toilet Paper Pass out**

Toilet paper will be passed 2 times a week by CCC staff. You are allowed one roll of toilet paper per inmate for a maximum of two rolls per cell. If you run out of toilet paper before the next toilet paper pass out you may purchase toilet paper on commissary.

#### **Inmate Releases and Hall Passes**

The movement by inmates in the institution will be controlled and monitored. During mass movements, inmates will walk on the extreme right hand side of the hallway in the direction of travel in single file only. (To allow visual supervision via use of monitors and/or staff). Loitering in the hallway is prohibited. In certain situations, movement will be as follows: Any inmate who exits his

**BRIAN NAUMAN, Petitioner, v. WARDEN LAW, et al., Respondent.**  
**SUPREME COURT OF MONTANA**  
**2009 Mont. LEXIS 248**  
**Docket No. OP 09-0089**  
**March 3, 2009, Decided**

**Editorial Information: Prior History**

Nauman v. State, 2003 Mont. Dist. LEXIS 2418 (2003)

**Judges:** CHIEF JUSTICE McGRATH, JUSTICES COTTER, WARNER, NELSON and MORRIS.

**Opinion**

**Opinion by:** CHIEF JUSTICE McGRATH JUSTICES COTTER WARNER NELSON and MORRIS.

**Opinion**

P1. Brian Nauman (Nauman) has filed a successive petition for a writ of habeas corpus, moved for leave to proceed without paying the filing fee and requested appointment of counsel.

P2. Nauman is serving a 20-year prison sentence, with 10 suspended, for sexual assault. Nauman claims he recently discovered he has been under compulsion to incriminate himself by admitting to crimes in sex offender treatment. He cites *United States v. Antelope*, 395 F.3d 1128, in support of his argument that his Fifth Amendment right not to incriminate himself was violated on the basis that he must not only admit his crime, but also disclose other sexual offenses in order to successfully complete the sex offender treatment program. Nauman claims he entered an *Alford* plea. He argues that because there is no record establishing his guilt, the requirement he complete sex offender treatment must be stricken from his sentencing order. He also argues that he has been unfairly denied parole because of an illegal condition imposed by the Board of Pardons and Parole (Board).

P3. We have reviewed Nauman's Judgment and Sentence rendered by the Eleventh Judicial District, Flathead County, in Cause No. DC 99-063(B) which specifically states Nauman pled guilty to sexual assault. The only obstacle to parole eligibility imposed by the District Court is that Nauman participate in sexual offender treatment programs available to him in prison; however, the court stated that "completion of any phase of such sexual offender treatment program shall not be a requirement for parole eligibility." While the Board denied Nauman's parole, he remains parole-eligible. Nonetheless, the Board has concluded that sex offender treatment will benefit Nauman in his ability to be a law-abiding citizen.

P4. Parole constitutes a limited grant of freedom to one who would otherwise be imprisoned. *McDermott v. McDonald*, 2001 MT 89, PP21-24, 305 Mont. 166, 24 P.3d 200. The Board has discretion to grant a parole when in the opinion of the Board: (1) the prisoner can be released without detriment to the prisoner or society; (2) parole is in the best interests of society; and (3) the prisoner is able and willing to fulfill the obligations of a law-abiding citizen. Section 46-23-201, MCA. The Board may consider factors such as failure to complete offense-related treatment in making the decision of whether to grant parole. The Board may deny parole to prisoners such as Nauman who, in the Board's

opinion, cannot meet the foregoing criteria.

P5. Next, we turn to Nauman's contention that he is serving a longer prison term because his parole was denied based on his refusal to incriminate himself in offense-related treatment. He argues that he did not refuse to incriminate himself, but that he is simply unable to answer questions related to his sex offense because no offense occurred. While Nauman maintains he is being subjected to compulsion to incriminate himself to his prejudice, we disagree. Notwithstanding any pronouncements of the Ninth Circuit in *Antelope*, this Court has consistently refused to allow any compelled disclosure made for therapeutic purposes to be used to support new charges in Montana's state district courts and courts of limited jurisdiction. Under the Fifth Amendment to the United States Constitution and Article II, Section 25 of the Montana Constitution, we determined that an offender is in the "classic penalty situation" when coerced to reveal incriminating information under compelled circumstances. *State v. Hameline*, 2008 MT 241, P22-23, 344 Mont. 461, 188 P.3d 1052. On the other hand, we have also recognized that an offender who refuses to disclose his offense history cannot be successfully treated. We have, therefore, held that when a sex offender is compelled to answer incriminating questions for offense-related treatment, the State cannot use those answers against the offender in a later proceeding. *Hameline*, P23. Thus, Nauman does not find himself in the same position as *Antelope*, as he has not demonstrated he is threatened with prosecution for offenses disclosed in treatment, nor has he demonstrated that his prison sentence has been extended because of his refusal to answer treatment questions.

P6. The writ of habeas corpus is not available to attack the validity of a conviction or sentence of a person adjudged guilty in a court of record who has failed to appeal or has exhausted the remedy of appeal. Nauman pled guilty. His sentence is not facially invalid and has not been enhanced beyond constitutional limitations. *Lott v. State*, 2006 MT 279, P19, 334 Mont. 270, 150 P.3d 337. Therefore,

P7. IT IS HEREBY ORDERED that leave to proceed without paying the filing fee is GRANTED.

P8. IT IS FURTHER ORDERED that the request for appointment of counsel is DENIED.

P9. IT IS FURTHER ORDERED that the petition for habeas corpus is DENIED.

P10. IT IS FURTHER ORDERED that Nauman is cautioned to refrain from filing petitions with this Court that address issues he has previously presented.

P11. IT IS FURTHER ORDERED that remittitur shall issue forthwith.

P12. IT IS FURTHER ORDERED that the Clerk of this Court serve a copy of this Order upon Nauman at his last known address and upon counsel of record.

DATED this 3rd day of March, 2009.

CHIEF JUSTICE McGRATH, JUSTICES COTTER, WARNER, NELSON and MORRIS.

# Whitefish lawyers say they

## Husband and wife duo run controversial law practice

HUNGRY HORSE NEWS, Thursday, April 27, 2000 — A11

# work in a corrupt system

## run into problems with judges, law enforcement

By TOM LAWRENCE  
Flathead Publishing Group

WHITEFISH — Don't get the idea that Jack and Phyllis Quatman think everyone in the Flathead Valley law enforcement community is out to get them.

Just the district court judges. Several of the sheriff's department officials. A few cops here and there. And many of the people who work at the county courthouse.

And they're not much on the media, either.

Other than that, their relations with the people they see on a regular basis are fine.

The Quatmans arrived in Whitefish in June 1997. They worked as prosecutors in the Bay Area in California, but they've been outspoken defense advocates since moving here.

"We fight for our clients," says Phyllis, 46.

"We've got the greatest system in the world," says Jack, 53. "Better than Castro's Cuba, and better than Stalin's Russia. But it's a system built on fairness and legal equity for all."

They say all-too-often in the Flathead a person is charged and tried based on who they are and what social position they hold. Laws are disregarded and legal procedure ignored in many cases, they claim.

"And it's important that everybody has those safeguards in place," Jack says.

The couple has labeled judges prejudiced, attacked law enforcement agencies for inept investigations and won several tough cases for their clients. Two District Court judges, Ted Lympus and Katherine "Kitty" Curtis, will no longer preside over cases Phyllis Quatman is involved in. *(Now Stadler too)*

"They are furious that I've done what I've done," she says. "They absolutely hate me down there."

What she's done is to take the system by storm. The Flathead is ruled by a "good old boys network," where cases are decided based on the personal relations between parties involved, not the legal issues at stake, she claims.

That's not how things work in other areas, the Quatmans say. "We weren't big firebrands at our previous jobs," Phyllis says.

In fact, they were on the other side of the table. Both were prosecutors in California. Jack, who graduated from law school in 1972, worked for the Alameda County District Attorney's Office.

He met Phyllis in 1978. She had left her home in Littleton, Colo., and moved to the Bay Area, where she was working as a bartender when they met. Both earned their undergraduate degrees from the University of California at Berkeley, and both graduated from the Hastings College of the Law.

"I was a gung-ho prosecutor," she says, especially when the case involved a battered woman.

But the couple wearied of constantly working with people who had committed heinous crimes. Murder, rape and other serious felony cases landed on their desks

on a regular basis.

So Phyllis, who had vacationed in Montana before, came to the Flathead to look for a home. She found Whitefish, and the couple relocated here.

Although the Quatmans came to Montana to get away from being involved with criminal justice—and much of their practice focuses on civil matters—they soon became involved in serious cases here, starting with the 1998 murder of C.J. Storkson. County law enforcement officials arrested and charged Whitefish teen-ager Christopher Showen with shooting his close friend.

Phyllis Quatman took the case. She says now that Showen always insisted that another local teen, Mario Daniels, shot Storkson. She convinced a jury, and Showen walked away a free man. Daniels, who was not charged with shooting Storkson, served a short sentence in a juvenile facility for his role in hiding Storkson's body and lying to police.

It's a case she's proud of winning. She says Showen should not have been charged with murder, no matter what personal flaws he may have had.

Jack Quatman says it's a lawyer's duty to aid a client. "You're the only lifeline to a criminal defendant," he says.

Phyllis Quatman says Showen was ready to plead guilty to a charge of tampering with evidence. He admitted to burying Storkson's body at a remote site near Olney.

Showen was prepared to accept a 10-year sentence for that crime, but County Attorney Tom Esch refused



to consider such a deal, Phyllis Quatman maintains. Esch says he won't discuss specifics of the case, and says he's surprised Quatman will without consulting her client.

But the couple speaks highly of Esch, whom they say is a decent man who is being unfairly criticized by others in the law enforcement establishment. Shoddy investigative work helped them win cases, they say, not ineptitude by Esch.

Esch says he has a personal view of the Quatmans, but it's not one he'll share with a reporter, he says. But he says there is no corruption in the Flathead County justice system.

Other lawyers don't face the same obstacles that they do, nor do they have the same problems. "I disagree with that," he says of the Quatman's allegations of an old-boy network.

But the couple says many criminal cases are poorly handled in the Flathead. When they were prosecutors the Quatmans tossed out cases that weren't legally sound. That needs to happen here, they feel.

Phyllis Quatman hopes to help reduce the 100-year sentences of Ted and Jesse Ernst, the Bigfork teens whose burglary spree ended in the murder of businessman Larry Streeter. And Jack Quatman has taken on the case of Jackie Buck, a Flathead woman who was charged with having sex with a 15-year-old boy and sharing marijuana cigarettes with him.

Phyllis was appointed to represent Buck, but when she wasn't reappointed as a public defender—due to her criticism of the system and her fierce work on behalf of her clients, in her view—Jack took it on for \$1.

They feel Buck shouldn't have been charged with either offense, and Jack refused to accept a plea offer that would have resulted in the sex crime charge being dropped. Buck was convicted of both offenses, and retired Judge John Warren, who heard the case, ordered Jack Quatman off the case.

Warren set a hearing to discuss the Quatmans' conduct in the case, but the state Supreme Court canceled the hearing. The Quatmans said they have never heard of a judge removing a defense lawyer because he refused to plead his client guilty.

They feel Buck made statements to police under duress and deserves another chance at clearing her name. The teen-ager and his parents don't want to see her go to jail, and neither does her probation officer.

Representing people charged with horrid or distasteful crimes can be difficult work. But Jack compares a lawyer's duty to that of a doctor. Everyone deserves competent treatment, and everyone deserves fair legal representation.

Jack Quatman says all the couple is doing is representing their clients as fairly as possible. And as experienced trial lawyers, they aren't afraid of tough cases.

"Jury trials don't scare us," he says.

But they are tired of dealing with judges they don't respect. Phyllis sought to run against Ted Lympus this year, but learned after she filed that she needed to have practiced law in Montana for five years before she could be a candidate for district court judge.

That elicited a retort from Lympus, who said he hoped her clients receive better legal advice than what she gave herself.

The couple says judges here are hostile to defense lawyers who challenge law enforcement. Jack

Quatman says he once discovered a district court judge privately offering advice to a prosecutor who was trying a case in front of him.

"It's amazing!" he says. "There are no checks or balances in this system."

Phyllis Quatman says she feels she was appointed as a public defender because judges thought since she was a former prosecutor, she wouldn't try too hard for her clients. When they realized she wouldn't roll over, she was not reappointed. When Jack Quatman sought to be named a public defender he wasn't chosen, even though public defenders are now selected by the Flathead County Commissioners, not the judges.

"We still need an independent public defenders office," Jack says. Too many of the public defenders plead their clients guilty to all charges, and send people to prison who don't belong there. The Quatmans say there are several people in the state prison in Deer Lodge for nothing more serious than writing bad checks.

Flathead County Sheriff Jim Dupont says he doesn't have any problems with the Quatmans. "I get along with Phyllis, and talk to Jack," Dupont says.

But he says their clients may spend more time behind bars because the couple has a difficult time finding a judge who will hear their cases. "I don't know how fair that is to their clients," Dupont says.

All this controversy has landed the Quatmans in the news several times, although they say they are publicity-shy.

They have become weary of media criticism, and feel some members of the media are too close to law enforcement. Reporters have forgotten their true roles, and have become lapdogs, not watchdogs, they say.

The Quatmans admit being so public, and being so controversial, can lead to problems. "Is it scary?" Jack asks. "Yeah. We get told on a regular basis—by people in law enforcement—to be careful."

They avoid going out at night, and Jack doesn't drive if he's had a single glass of wine. Phyllis doesn't drink, but she said the couple prefers the safety of their home. "I try to downplay those fears," she says.

But they said they trust a lot of people in law enforcement. Whitefish Police Chief Bill LaBrie is an honorable, decent man, they said, and Flathead County Sheriff's Department Commander Maxine Lamb is trustworthy, in their view.

And they represent several people who work in law enforcement in civil matters.

They also have made "several wonderful friends" in the last three years. Their two children attend Whitefish schools, and they enjoy spending time learning about the Flathead.

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also being firmly convinced by the evidence that Gollaher was guilty, proceeded accordingly. He had before him a man unwilling to take the first step toward rehabilitation and he imposed sentence accordingly. Gollaher's Fifth Amendment rights were not infringed."

*Gollaher*, 419 F.2d at 530-31.

Our prior decision in *State v. Donnelly*, 47 St.Rep. 1600, 244 Mont. 371, 798 P.2d 89 (1990), appears to be in accord with the Ninth Circuit's decision in *Gollaher*. In *Donnelly*, we were asked to decide {249 Mont. 90} whether a defendant, who was already imprisoned at the Montana State Prison, was denied his right to avoid self-incrimination when he was denied parole until he completed a sex offender course at the Prison. Interestingly, the evidence in that case was that in order to be accepted into the inpatient sexual offender program at the Prison, that defendant also had to admit that he committed the crime of which he was convicted. (Therefore, if the trial court's objective in this case was to obtain treatment for Donald Imlay, imprisonment does not appear to be the solution.) At any rate, we found that denying probation under those circumstances did not violate the defendant's privilege against self-incrimination. Our decision appears to have been based on the following conclusion:

"Here, defendant's decision to remain silent is a tactical one, not a compelled one. Defense counsel argues that, in reality, {813 P.2d 985} defendant's testimony is in fact compelled since it is a prerequisite for parole. It is possible the defendant may be paroled sooner if he admits to incest than if he remains silent. However, defendant may remain silent if he so chooses, and still possibly be paroled at some future date based on good behavior.

"Furthermore, failure to admit to incest will not result in certain penalty to defendant, it will only result to preserve his current ineligible parole status. In this case, the district court ordered that the defendant was ineligible for parole *until* the satisfaction of a condition subsequent. The condition subsequent is partially satisfied by defendant's successful completion of the sexual offender program at Montana State Prison. Failure to satisfy this condition subsequent, i.e., failure to satisfactorily complete the sex offender program, will not result in a penalty, but will merely result in defendant's continued ineligibility for parole."

*Donnelly*, 47 St.Rep. at 1607-08, 244 Mont. at 382, 798 P.2d at 96.

Without debating the merits of the foregoing conclusion from *Donnelly*, it is clear that in this case the defendant is being subjected to a penalty that he would not otherwise be subjected to if he would simply admit his guilt. That penalty is that he serve time in the Montana State Prison.

Even though the defendant has already been convicted of the crime that he denies, our system still provides, as noted in the *Thomas* decision, for opportunities to challenge that conviction. For example, the defendant still had the right to challenge his conviction, based on newly discovered evidence, or by collateral attack. These are important rights guaranteed to every defendant under our criminal justice {249 Mont. 91} system, but would be rendered meaningless if the defendant could be compelled to admit guilt as a condition to his continued freedom. Furthermore, while such a defendant would be foreclosed from invoking the protection of such procedures to establish his innocence, the reliability of an admission of guilt under such circumstances would be highly suspect. In addition, by admitting guilt in this case, the defendant would have to abandon his right guaranteed by the Fifth Amendment, not only as to the crime for which he has been convicted, but also to the crime of perjury. He testified in his own defense during his trial and denied committing the offense with which he was charged.

Under these circumstances, and absent any grant of immunity, we believe that the better reasoned decisions are those decisions which protect the defendant's constitutional right against self-incrimination, and which prohibit augmenting a defendant's sentence because he refuses to confess to a crime or invokes his privilege against self-incrimination. To the extent that our decision in *Donnelly* is inconsistent with this opinion, that part of the *Donnelly* decision is overruled.

## Questions about county attorney

In a recent legal proceeding the Flathead County Attorney said, "There is no actionable duty owed by [Planning Director Jeff] Harris, or other public employees, to provide honest government services."

Other statements that have come from this county attorney are just as disturbing. The County Attorney's office routinely advised various boards in Flathead County the following: "Don't worry about whether it's legal or not; do whatever you want and we will defend you." The County Attorney's office has also advised previous county commissioners that they "don't represent the citizens of Flathead County."

These statements show an arrogant attitude on the part of the Flathead County Attorney that the county employees are above the law. Mr. Corrigan, who runs as a Republican, should be ashamed of himself. After all don't Republicans say they believe in the rule of law? Apparently not in the world of Flathead County Attorney Ed Corrigan.

But this attitude that permeates from the Flathead County Attorney brings up a more disturbing concern. The County Attorney is responsible for prosecuting criminals and enforcing the laws of the state of Montana. The question then needs to be asked: Since the County Attorney believes that public employees don't need to provide "honest government services," then how can we be sure that a case the County Attorney presents has been honest? How can a defendant in a case be sure that evidence isn't being fabricated or planted, or that he or she isn't being framed by this County Attorney?

Serious questions that demand serious answers.  
Dick Skees, Columbia Falls  
Daily Inland Lake P. 6

Friday - 08-08-2010  
If there is no... duty owed by... Public employees to provide honest services.  
wow!

wow!!!  
Huh?

By WILLIAM SIMONSEN

Lee Montana Newspapers

Notable changes are in the works for the criminal justice system in Flathead County. And according to at least three attorneys, the changes are none too soon. Apparently due to a recent court ruling, public defender attorneys will be chosen by a new method. And some former public defenders are hopeful the change indicates a change in philosophy about how indigent cases are handled.

Traditionally the district judges in Flathead County selected the attorneys hired to defend indigent clients accused of felonies from a short list of applicants, with an interesting twist to the selection process. According to former Deputy Flathead County Attorney Dan Wilson, who also served for a short time as a public defender, "While I was in the county attorney's office, successful applicants for the public defender position had to first get the approval of the county attorney."

This practice put the prosecuting attorneys in the enviable position of being allowed to choose their opponents, he said.

But current Flathead County Attorney Tom Esch said, "I don't think we approve or recommend people. It's up to the court." He said the county attorney's office has no power to approve or reject any candidates for public defender positions.

"People ask us our opinions on things all the time, and we give them our opinions, but there is nothing formal," said Esch.

District Judge Katherine Curtis said any allegations of discussions between the judges and the county attorney concerning public defender candidates were "totally untrue."

Bigfork attorney Don Vernay, formerly a public defender, said, "The entire method of appointment and selection of public defenders is laughable."

It is a joke to attorneys in the rest of the state that now public defenders try cases in the Flathead Valley," he added.

Vernay said a grand jury should be impaneled to investigate the way indigent clients are defended in Flathead County. Vernay recently filed an appeal on behalf of former Bigfork resident Terry Olson alleging the youth received inadequate legal counsel when he pleaded guilty to killing his father last year.

Whitefish attorney Phyllis Quatman, currently a public defender, also has criticized the current system.

Vernay said judges have a potential conflict of interest because they are allowed to choose the attorneys who will argue cases before them. In the adversarial world of trial attor-

neys, an attorney might hesitate to pursue a legal argument with a judge who renews his contract.

Vernay claims political considerations, and the desire for job security govern many of the legal actions of public defenders. Because the district court judges control the appointment process for the lucrative contracts, most public defenders are reluctant to become too aggressive in defense of their clients.

Vernay said when he appealed one of the district court's decisions, his public defender's contract was not renewed. Whether by coincidence or not, shortly after Wilson asked for a change of judges in a case, his contract too, was not renewed.

Quatman has taken the issue to the Montana Supreme Court. She said her days as a public defender are numbered due to her appeals to higher courts questioning district court decisions and procedures.

But others have criticized high legal fees and expenses paid for such appeals.

Public defender positions are awarded as either full-time or half-time contracts, says the Flathead County Public Defender Procedural Memorandum and Agreement, a legal document signed by all seven current public defenders and both district judges. The annual agreement runs concurrent with the county's fiscal year - July 1 through June 31.

One full-time contract to defend adults is worth \$45,243, plus \$18,000 per year for office expenses. A half-time contract pays an attorney \$22,621, plus \$9,000 per year for office expenses.

The chief public defender Bob Allison receives an additional

\$3,600 in compensation for his supervisory duties.

Ed Falla, one of the busiest public defenders, has one and one-half contracts, so he was paid \$67,865 in salary plus \$27,000 for office expenses for the 1998-99 fiscal year. Falla handles the majority of felony cases for the public defenders office for his \$94,865 total reimbursement, but manages not to take any of the cases to trial.

When contacted Monday, Falla said, "I have no comment."

On March 6, Quatman filed a special subpoena of district court records which showed that during the past five years in Flathead County, Falla has taken no cases to jury trial, nor has he filed any motions to suppress evidence against his defendants or motions to dismiss charges against them.

Flathead County Clerk and Recorder Sue Haverfield said the county budget for 1998-99 contained \$361,000 earmarked for public defender salaries and expenses. She said nearly all of the money is reimbursed from state sources administered by the Supreme Court.

An unofficial count of the disposition of criminal cases in which the defendant was represented by a public defender showed more than 90 percent were settled with a plea agreement. The agreements were negotiated between the county attorney's office and a public defender and were followed by a guilty plea by the defendant.

Both deputy county attorneys and public defenders claim the plea bargain system has evolved to its current form due to the tremendous caseload on the courts.

Curtis said she is unaware of any connection between the workload of the courts and plea bargaining. "I'm not privy to the thought processes of the prosecuting attorneys" when they offer to allow a plea bargain, she said.

Even some of the system's harshest critics admit plea bargaining is the best way to proceed in some cases in order to move them through the system.

of our local "Justice" system of which this article is only an mediator of the "ice-

he does not know?

I'm not certain if I am more appalled by the fact that this scenario exists, or by the fact that after his article was published